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Supreme Court, U.S.  
**FILED**

**AUG 13 1998**

**OFFICE OF THE CLERK**

No. 97-7541

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1997

AMANDA MITCHELL,  
*Petitioner*

v.

UNITED STATES OF AMERICA,  
*Respondent*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit

**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED JANUARY 13, 1998  
CERTIORARI GRANTED JUNE 15, 1998

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## DOCKET ENTRIES

DATE	PROCEEDINGS
8/12/94	Superseding Indictment returned as to Amanda Mitchell and others docketed at 94-CR-159-14 (Eastern District of Pennsylvania)
9/19/94	Arraignment—plea of not guilty entered to Counts 2/11/21 and 28.
10/16/95	Amanda Mitchell pleads guilty to Counts 2/11/21 and 28.
7/2/96	Amanda Mitchell sentenced to one 120 months in prison, supervised release of six years and special assessment of \$200.00.
7/11/96	Notice of appeal filed to the Third Circuit Court of Appeals.
7/17/97	Oral argument before the Third Circuit on the issues of the right to invoke the Fifth Amendment at sentencing and the foreseeability of the drug quantities attributable to Amanda Mitchell for sentencing purposes.
9/9/97	Published opinion filed with Chief Judge Sloviter writing for herself and Judge Roth and Circuit Judge Paul Michel concurring.
10/7/97	Petitioner's application for a rehearing in banc.
10/17/97	Order denying rehearing and rehearing in banc.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 94-159-S

UNITED STATES OF AMERICA

v.

HARRY LEE RIDDICK, JR., PHILL GROSS, FRANK ALEXANDER, CRAIG ALTON RIDDICK, HILARION TORRUELLA, JR. a/k/a "Johnny," SHANNON RILEY, PAUL BELFIELD, BETH ANN STOCKE, SYLVESTER THOMAS, a/k/a "Sly," RICHARD THOMPSON, KATHY HOTTENSTEIN, LORI HOTTENSTEIN, JAMES ADAMS, AMANDA MITCHELL, a/k/a "Amanda Foster," HANNEL JAMES, a/k/a "Tony," GLENDLY SERGEANT, a/k/a "Courtney," BRENDA INABINETT, BIENVENIDO PEREZ, MICHAEL PLETZ, RODERICK BRANTLEY, a/k/a "Chunk," CLARA SMITH, RUSSELL HOLMES, and MELVIN HOLLOWAY

Violation: 21 U.S.C. § 846, (1 Count),  
21 U.S.C. § 848, (1 Count),  
21 U.S.C. § 860(a), (31 Counts),  
21 U.S.C. § 841(a)(1), (13 Counts),  
18 U.S.C. § 2 (30 Counts),  
21 U.S.C. § 853 (2 Counts)

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

From in or about 1989 to in or about March of 1994, at Lehigh and Northampton Counties in the Eastern District of Pennsylvania and elsewhere, the defendant,

HARRY LEE RIDDICK, JR.

knowingly and intentionally did engage in a continuing criminal enterprise in that he did violate Title 21, United States Code, Sections 841(a)(1), 846, and 860(a), as set forth in Counts 2, 8-13, 15, 18, 19, 21, 22, 28, 33, and 34 of this Superseding Indictment, and did commit other violations of those same statutes which were part of a continuing series of violations of those same statutes undertaken by the defendant in concert with at least five other persons with respect to whom HARRY LEE RIDDICK, JR., occupied a position of organizer, supervisor, and manager, and from which continuing series of violations defendant HARRY LEE RIDDICK, JR., obtained substantial income and resources.

In violation of Title 21, United States Code, Section 848(a).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

From in or about 1989 to in or about March of 1994, in Lehigh and Northampton Counties, in the Eastern District of Pennsylvania, and elsewhere, the defendants,

HARRY LEE RIDDICK, JR.,  
PHILL GROSS,  
FRANK ALEXANDER,  
CRAIG ALTON RIDDICK,  
HILARION TORRUELLAS, JR.,  
a/k/a "Johnny,"  
SHANNON RILEY,  
PAUL BELFIELD,  
BETH ANN STOCKE,  
SYLVESTER THOMAS,  
a/k/a "Sly,"  
RICHARD THOMPSON,  
KATHY HOTTENSTEIN,  
LORI HOTTENSTEIN,  
JAMES ADAMS,



AMANDA MITCHELL,  
a/k/a "Amanda Foster,"  
HANNEL JAMES,  
a/k/a "Tony,"  
GLENDLY SERGEANT,  
a/k/a "Courtney,"  
BRENDA INABINETT,  
RUSSELL HOLMES,  
MELVIN HOLLOWAY,  
CLARA SMITH  
BIENVENIDO PEREZ,  
MICHAEL PLETZ, and  
RODERICK BRANTLEY,  
a/k/a "Chunk,"

did knowingly and wilfully combine, conspire, confederate and agree together and with other persons known and unknown to the Grand Jury, to distribute more than five kilograms of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841 (a)(1).

#### MANNER AND MEANS

1. It was part of the conspiracy that the defendants HARRY LEE RIDDICK, JR., PHILL GROSS, FRANK ALEXANDER, CRAIG ALTON RIDDICK, SHANNON RILEY, HILARION TORRUELLAS, JR., a/k/a "Johnny," would and did purchase kilogram quantities of cocaine from sources in New York City and elsewhere for distribution in Lehigh and Northampton Counties.

2. It was further part of the conspiracy that the defendants HARRY LEE RIDDICK, JR., CRAIG ALTON RIDDICK, HILARION TORRUELLAS, JR., a/k/a "Johnny," and SHANNON RILEY, would and did at various times set the price of cocaine to be sold to customers.

3. It was further part of the conspiracy that the defendants and others known and unknown to the Grand

Jury would and did distribute quantities of cocaine to customers.

4. It was further part of the conspiracy that the defendants would and did act in different roles and would and did perform different tasks at different times.

5. It was further part of the conspiracy that the defendant PHILL GROSS would and did sell cocaine in and outside the premises of Phill's Bar & Grill, 349 Hanover Avenue, Allentown, Pennsylvania, and would and did at various times allow HARRY LEE RIDDICK, JR., and associates of HARRY LEE RIDDICK, JR., including but not limited to CRAIG ALTON RIDDICK, SHANNON RILEY, SYLVESTER THOMAS, PAUL BELFIELD, BETH ANN STOCKE, RICHARD THOMPSON, RUSSELL HOLMES, and MELVIN HOLLOWAY to use Phill's Bar and Grill, 349 Hanover Avenue, Allentown, as a place in which to sell cocaine and to contact customers to schedule cocaine sales. PHILL GROSS would and did discourage others not associated with HARRY LEE RIDDICK, JR., from selling cocaine in and outside Phill's Bar and Grill, in order to guarantee HARRY LEE RIDDICK, JR., and his associates the exclusive opportunity to provide cocaine to customers on those premises.

6. It was further part of the conspiracy that the defendant, HARRY LEE RIDDICK, JR., would and did provide vehicles to couriers to facilitate their delivery of cocaine to customers at his direction.

7. It was further part of the conspiracy that the defendant HARRY LEE RIDDICK, JR., would and did carry firearms in vehicles used by him in order to protect quantities of cocaine and the proceeds of cocaine distribution, and to facilitate the distribution of cocaine.

8. It was further part of the conspiracy that the defendants would and did use digital and voice pagers to communicate with cocaine suppliers and customers and to

set up cocaine sales. The defendant HARRY LEE RIDDICK, JR., supplied pagers to couriers to facilitate the delivery of cocaine to customers. The defendants assigned numerical identifier codes to each other and to suppliers and customers, which those individuals used when paging the defendants to order or offer quantities of cocaine.

9. It was further part of the conspiracy that HARRY LEE RIDDICK, JR., would attempt to use his acquaintances within a certain law enforcement agency to determine whether the defendants and their associates were under investigation and in order to protect the defendants' cocaine trafficking operation.

#### OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed by defendants in the Eastern District of Pennsylvania and elsewhere:

1. On or about May 17, 1991, at Phill's Bar & Grill, 349 Hanover Avenue, Allentown, PHILL GROSS sold a quantity of cocaine to a person known to the Grand Jury.
2. On or about June 7, 1991, at Phill's Bar & Grill, 349 Hanover Avenue, Allentown, PHILL GROSS sold a quantity of cocaine to a person known to the Grand Jury.
3. On or about June 15, 1991, at Phill's Bar & Grill, 349 Hanover Avenue, Allentown, PHILL GROSS sold a quantity of cocaine to a person known to the Grand Jury.
4. On or about June 21, 1991, at Phill's Bar & Grill, 349 Hanover Avenue, Allentown, PHILL GROSS sold a quantity of cocaine to a person known to the Grand Jury.
5. On or about June 28, 1991, at Phill's Bar & Grill, 349 Hanover Avenue, Allentown, PHILL GROSS sold a quantity of cocaine to a person known to the Grand Jury.
6. On or about March 10, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a

quantity of cocaine to a person known to the Grand Jury, with the assistance of SYLVESTER THOMAS, a/k/a "Sly".

7. On or about March 12, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of SYLVESTER THOMAS, a/k/a "Sly," and RICHARD THOMPSON.

8. On or about March 26, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of RICHARD THOMPSON.

9. On or about April 9, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of JAMES ADAMS, RICHARD THOMPSON, and AMANDA MITCHELL, a/k/a "Amanda Foster."

10. On or about April 15, 1992, at 112 South Sixth Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of SYLVESTER THOMAS, a/k/a "Sly," and several other persons known to the Grand Jury.

11. On or about April 29, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of RICHARD THOMPSON.

12. On or about May 15, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury.

13. On or about May 27, 1992, at 747 Greenleaf Street, Allentown, CRAIG ALTON RIDDICK sold a



quantity of cocaine to a person known to the Grand Jury.

14. On or about June 2, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury with the assistance of SYLVESTER THOMAS, a/k/a "Sly."

15. On or about June 11, 1992, at 747 Greenleaf Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

16. On or about June 26, 1992, at 747 Greenleaf Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

17. On or about July 12, 1992, SYLVESTER THOMAS, a/k/a "Sly," brought a quantity of cocaine to 847 Jackson Street, Allentown, on the instructions of HARRY LEE RIDDICK, JR., in order to sell some or all of it to a person known to the Grand Jury.

18. On or about July 17, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury with the assistance of SYLVESTER THOMAS, JR.

19. On or about July 17, 1992, at 747 Greenleaf Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

20. On or about August 12, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury with the assistance of AMANDA MITCHELL, a/k/a "Amanda Foster."

21. On or about September 4, 1992, at 747 Greenleaf Street, Allentown, HARRY LEE RIDDICK, JR., sold a

quantity of cocaine to a person known to the Grand Jury with the assistance of JAMES ADAMS.

22. On or about September 8, 1992, at 8 Catasauqua Road, Whitehall, LORI HOTTENSTEIN sold a quantity of cocaine to a person known to the Grand Jury.

23. On or about September 14, 1992, at 8 Catasauqua Road, Whitehall, LORI HOTTENSTEIN sold a quantity of cocaine to a person known to the Grand Jury.

24. On or about September 25, 1992, at 8 Catasauqua Road, Whitehall, LORI HOTTENSTEIN sold a quantity of cocaine to a person known to the Grand Jury.

25. On or about September 28, 1992, at 8 Catasauqua Road, Whitehall, LORI HOTTENSTEIN sold a quantity of cocaine to a person known to the Grand Jury.

26. On or about October 20, 1992, at 747 Greenleaf Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

27. On or about November 11, 1992, at 322 North Thirteenth Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury with the assistance of AMANDA MITCHELL, a/k/a "Amanda Foster."

28. On or about November 13, 1992, at 322 North Thirteenth Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

29. On or about January 15, 1993, at 322 North Thirteenth Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

30. On or about January 26, 1993, at 322 North Thirteenth Street, Allentown, CRAIG ALTON RIDDICK



sold a quantity of cocaine to a person known to the Grand Jury.

31. On or about February 9, 1993, at 322 North Thirteenth Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

32. On or about February 17, 1993, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury with the assistance of MELVIN HOLLOWAY.

33. On or about March 2, 1993, at 322 North Thirteenth Street, Allentown, HARRY LEE RIDDICK, JR., sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of PAUL BELFIELD.

34. On or about March 4, 1993, at 322 North Thirteenth Street, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

35. On or about March 10, 1993, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, PAUL BELFIELD sold a quantity of cocaine to a person known to the Grand Jury.

36. On or about March 16, 1993, at 322 North Thirteenth Street, Allentown, PAUL BELFIELD sold a quantity of cocaine to a person known to the Grand Jury.

37. On or about April 16, 1993, at Fifth and Allen Streets, Allentown, CRAIG ALTON RIDDICK sold a quantity of cocaine to a person known to the Grand Jury.

38. On or about April 21, 1993, at 311 North Eighth Street, Allentown, FRANK ALEXANDER sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of BRENDA INABINETT.

39. On or about April 29, 1993, at 322 North Thirteenth Street, Allentown, PAUL BELFIELD sold a quantity of cocaine to a person known to the Grand Jury.

40. On or about May 13, 1993, at 311 North Eighth Street, Allentown, HANNEL JAMES, a/k/a "Tony," sold a quantity of cocaine to a person known to the Grand Jury, on the instructions of FRANK ALEXANDER, and with the assistance of BRENDA INABINETT.

41. On or about May 17, 1993, at 311 North Eighth Street, Allentown, HANNEL JAMES, a/k/a "Tony," sold a quantity of cocaine to a person known to the Grand Jury, on the instructions of FRANK ALEXANDER, and with the assistance of BRENDA INABINETT.

42. On or about May 20, 1993, at 311 North Eighth Street, Allentown, BRENDA INABINETT spoke to HANNEL JAMES, a/k/a "Tony," about selling a quantity of cocaine to a person known to the Grand Jury.

43. On or about May 20, 1993, at 311 North Eighth Street, Allentown, GLENDLY SERGEANT sold a quantity of cocaine to a person known to the Grand Jury, with the assistance of BRENDA INABINETT.

44. On or about June 2, 1993, in the vicinity of Phill's Bar and Grill, 349 Hanover Avenue, Allentown, RUSSELL HOLMES and SYLVESTER THOMAS, a/k/a "Sly," sold a quantity of cocaine to a person known to the Grand Jury.

In violation of Title 21, United States Code, Section 846.

### COUNT THREE

#### THE GRAND JURY FURTHER CHARGES THAT:

On or about May 17, 1991, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendant,

**PHILL GROSS,**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

**COUNT FOUR****THE GRAND JURY FURTHER CHARGES THAT:**

On or about June 7, 1991, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendant,

**PHILL GROSS,**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

**COUNT FIVE****THE GRAND JURY FURTHER CHARGES THAT:**

On or about June 15, 1991, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendant,

**PHILL GROSS,**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

**COUNT SIX****THE GRAND JURY FURTHER CHARGES THAT:**

On or about June 21, 1991, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendant,

**PHILL GROSS,**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

**COUNT SEVEN****THE GRAND JURY FURTHER CHARGES THAT:**

On or about June 28, 1991, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendant,

**PHILL GROSS,**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

**COUNT EIGHT****THE GRAND JURY FURTHER CHARGES THAT:**

On or about March 10, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,



HARRY LEE RIDDICK, JR., and  
SYLVESTER THOMAS, a/k/a "Sly,"

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT NINE

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 12, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

HARRY LEE RIDDICK, JR.,  
SYLVESTER THOMAS, a/k/a "Sly,"  
and RICHARD THOMPSON,

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 28.1 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT TEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 26, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

HARRY LEE RIDDICK, JR., and  
SYLVESTER THOMAS, a/k/a "Sly,"

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 28.1 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT ELEVEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about April 9, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

HARRY LEE RIDDICK, JR., JAMES ADAMS,  
RICHARD THOMPSON, and  
AMANDA MITCHELL, a/k/a "Amanda Foster,"

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 29.4 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT TWELVE

THE GRAND JURY FURTHER CHARGES THAT:

On or about April 29, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,



HARRY LEE RIDDICK, JR.,  
and RICHARD THOMPSON,

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 28.0 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT THIRTEEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about May 15, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendant.

HARRY LEE RIDDICK, JR.,

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 30.8 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT FOURTEEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about May 27, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

CRAIG ALTON RIDDICK,

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 1.322 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT FIFTEEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 2, 1992 at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

HARRY LEE RIDDICK, JR., and  
SYLVESTER THOMAS,  
a/k/a, "Sly,"

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 28.8 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT SIXTEEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 11, 1992, at Fifth and Washington Streets, Allentown, in the Eastern District of Pennsylvania, the defendant,

**CRAIG ALTON RIDDICK,**

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 12.6 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the playground at Sixth and Tilghman Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

**COUNT SEVENTEEN****THE GRAND JURY FURTHER CHARGES THAT:**

On or about June 26, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

**CRAIG ALTON RIDDICK,**

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 13.8 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

**COUNT EIGHTEEN****THE GRAND JURY FURTHER CHARGES THAT:**

On or about July 12, 1992, at 847 Jackson Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

**HARRY LEE RIDDICK, JR.,**

did knowingly and intentionally possess with intent to distribute, and aid and abet and cause the possession with

intent to distribute, approximately 58.78 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the playground at Ninth and Jackson Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

**COUNT NINETEEN****THE GRAND JURY FURTHER CHARGES THAT:**

On or about July 17, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

**HARRY LEE RIDDICK, JR., and  
SYLVESTER THOMAS, a/k/a "Sly,"**

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 14.3 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

**COUNT TWENTY****THE GRAND JURY FURTHER CHARGES THAT:**

On or about July 17, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

**CRAIG ALTON RIDDICK,**

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 15.1 grams of a substance containing a detectable amount of cocaine, a Sched-



ule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, Ninth and Cedar Streets, Allentown.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT TWENTY-ONE

#### THE GRAND JURY FURTHER CHARGES THAT:

On or about August 12, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

**HARRY L. RIDDICK, JR. and  
AMANDA MITCHELL, a/k/a "Amanda Foster,"**

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 14.0 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, a public elementary school at Ninth and Cedar Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT TWENTY-TWO

#### THE GRAND JURY FURTHER CHARGES THAT:

On or about September 4, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

**HARRY L. RIDDICK, JR.,  
and JAMES ADAMS**

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, 12.9 grams of a sub-

stance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, a public elementary school at Ninth and Cedar Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT TWENTY-THREE

#### THE GRAND JURY FURTHER CHARGES THAT:

On or about September 8, 1992, at 8 Catasauqua Road, Whitehall, in the Eastern District of Pennsylvania, the defendant,

**LORI HOTTENSTEIN**

did knowingly and intentionally distribute 0.231 gram of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

#### COUNT TWENTY-FOUR

#### THE GRAND JURY FURTHER CHARGES THAT:

On or about September 14, 1992, at 8 Catasauqua Road, Whitehall, in the Eastern District of Pennsylvania, the defendant,

**LORI HOTTENSTEIN**

did knowingly and intentionally distribute approximately 0.238 gram of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).



## COUNT TWENTY-FIVE

## THE GRAND JURY FURTHER CHARGES THAT:

On or about September 25, 1992, at 8 Catasauqua Road, Whitehall, in the Eastern District of Pennsylvania, the defendant,

LORI HOTTENSTEIN

did knowingly and intentionally distribute approximately 0.208 gram of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

## COUNT TWENTY-SIX

## THE GRAND JURY FURTHER CHARGES THAT:

On or about September 28, 1992, at 8 Catasauqua Road, Whitehall, in the Eastern District of Pennsylvania, the defendant,

LORI HOTTENSTEIN

did knowingly and intentionally distribute approximately 3.25 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).

## COUNT TWENTY-SEVEN

## THE GRAND JURY FURTHER CHARGES THAT:

On or about October 20, 1992, at 747 Greenleaf Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

CRAIG ALTON RIDDICK

did knowingly and intentionally distribute, and aid and abet and cause the distribution of 13.5 grams of a substance containing a detectable amount of cocaine, a

Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Washington Elementary School, a public elementary school at Ninth and Cedar Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

## COUNT TWENTY-EIGHT

## THE GRAND JURY FURTHER CHARGES THAT:

On or about November 11, 1992, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

HARRY LEE RIDDICK, JR., and  
AMANDA MITCHELL, a/k/a "Amanda Foster,"

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, 14.1 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

## COUNT TWENTY-NINE

## THE GRAND JURY FURTHER CHARGES THAT:

On or about November 13, 1992, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

CRAIG ALTON RIDDICK

did knowingly and intentionally distribute 13.7 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one

thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

### COUNT THIRTY

THE GRAND JURY FURTHER CHARGES THAT:

On or about January 15, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

### CRAIG ALTON RIDDICK

did knowingly and intentionally distribute 13.9 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

### COUNT THIRTY-ONE

THE GRAND JURY FURTHER CHARGES THAT:

On or about January 26, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

### CRAIG ALTON RIDDICK

did knowingly and intentionally distribute 26.0 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

### COUNT THIRTY-TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 9, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

### CRAIG ALTON RIDDICK

did knowingly and intentionally distribute 27.6 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

### COUNT THIRTY-THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 17, 1993, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendants,

### HARRY LEE RIDDICK, JR. and MELVIN HOLLOWAY,

did knowingly and intentionally distribute, and aid and abet and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.



## COUNT THIRY-FOUR

## THE GRAND JURY FURTHER CHARGES THAT:

On or about March 2, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

HARRY LEE RIDDICK, JR., and  
PAUL BELFIELD

did knowingly and intentionally distribute 27.7 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

## COUNT THIRTY-FIVE

## THE GRAND JURY FURTHER CHARGES THAT:

On or about March 4, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

CRAIG ALTON RIDDICK

did knowingly and intentionally distribute 26.7 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

## COUNT THIRTY-SIX

## THE GRAND JURY FURTHER CHARGES THAT:

On or about March 10, 1993, at Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendant,

PAUL BELFIELD

did knowingly and intentionally distribute, and aid and abet and cause the distribution of 14.1 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

## COUNT THIRTY-SEVEN

## THE GRAND JURY FURTHER CHARGES THAT:

On or about March 16, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

PAUL BELFIELD

did knowingly and intentionally distribute 27.2 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

## COUNT THIRTY-EIGHT

## THE GRAND JURY FURTHER CHARGES THAT:

On or about April 13, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,



**PAUL BELFIELD**

did knowingly and intentionally distribute approximately 25.7 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

**COUNT THIRTY-NINE****THE GRAND JURY FURTHER CHARGES THAT:**

On or about April 16, 1993, at Fifth and Allen Streets, Allentown, in the Eastern District of Pennsylvania, the defendant,

**CRAIG ALTON RIDDICK**

did knowingly and intentionally distribute approximately 27.8 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the playground at Sixth and Tilghman Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

**COUNT FORTY****THE GRAND JURY FURTHER CHARGES THAT:**

On or about April 21, 1993, at 311 North Eighth Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

**FRANK ALEXANDER and  
BRENDA INABINETT**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance

containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Central Elementary School, a public elementary school at Chew and Lumber Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

**COUNT FORTY-ONE****THE GRAND JURY FURTHER CHARGES THAT:**

On or about April 29, 1993, at 322 North Thirteenth Street, Allentown, in the Eastern District of Pennsylvania, the defendant,

**PAUL BELFIELD**

did knowingly and intentionally distribute approximately 51.1 grams of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Franklin Playground, a playground at Fourteenth and Emmett Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a).

**COUNT FORTY-TWO****THE GRAND JURY FURTHER CHARGES THAT:**

On or about May 13, 1993, at 311 North Eighth Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

**FRANK ALEXANDER, BRENDA INABINETT,  
and HANNEL JAMES, a/k/a "Tony,"**

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of

the real property comprising the Central Elementary School, a public elementary school at Chew and Lumber Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT FORTY-THREE

##### THE GRAND JURY FURTHER CHARGES THAT:

On or about May 17, 1993, at 311 North Eighth Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

FRANK ALEXANDER, BRENDA INABINETT,  
and HANNEL JAMES, a/k/a "Tony,"

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Central Elementary School, a public elementary school at Chew and Lumber Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT FORTY-FOUR

##### THE GRAND JURY FURTHER CHARGES THAT:

On or about May 20, 1993, at 311 North Eighth Street, Allentown, in the Eastern District of Pennsylvania, the defendants,

FRANK ALEXANDER, BRENDA INABINETT,  
HANNEL JAMES, a/k/a "Tony," and  
GLENLY SERGEANT, a/k/a "Courtney,"

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance

containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, within one thousand feet of the real property comprising the Central Elementary School, a public elementary school at Chew and Lumber Streets, Allentown, Pennsylvania.

In violation of Title 21, United States Code, Section 860(a), and Title 18, United States Code, Section 2.

#### COUNT FORTY-FIVE

##### THE GRAND JURY FURTHER CHARGES THAT:

On or about June 2, 1993, in the vicinity of Phill's Bar and Grill, 349 Hanover Avenue, Allentown, in the Eastern District of Pennsylvania, the defendants,

RUSSELL HOLMES, and  
SYLVESTER THOMAS, a/k/a "Sly,"

did knowingly and intentionally distribute, and aid, abet, and cause the distribution of, a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

#### COUNT FORTY-SIX

##### THE GRAND JURY FURTHER CHARGES THAT:

On or about March 11, 1994, at 2603 Lafayette Avenue, Bethlehem, in the Eastern District of Pennsylvania,

SHANNON RILEY

did knowingly and intentionally possess with intent to distribute a quantity of a substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance.

In violation of Title 21, United States Code, Section 841(a)(1).



**COUNT FORTY-SEVEN  
(CRIMINAL FORFEITURE)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. The defendant HARRY LEE RIDDICK, JR. has committed violations of Title 21, United States Code, Sections 841(a)(1), 846, 848(a) and 860(a), as alleged in Counts One, Two, 8-13, 15, 18, 19, 21, 22, 28, 33, and 34 of this Superseding Indictment, which counts are realleged and incorporated by reference, and all of which violations are punishable by imprisonment for more than one year.

2. As the result of the foregoing violations of Subchapter I of the Controlled Substances Act, defendant HARRY LEE RIDDICK, JR. shall forfeit to the United States of America:

(A) any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such violations of Subchapter I of the Controlled Substances Act;

(B) any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violations of Subchapter I of the Controlled Substances Act; and

(C) any interest in, claims against, and property and contractual rights affording a source of influence over, the continuing criminal enterprise.

3. Any other property of the defendant up to the value of the assets and property described above shall be forfeited if any asset or property, as the result of any act or omission of the defendant: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; and (e) has been com-

mingled with other property which cannot be divided without difficulty.

In violation of Title 21, United States Code, Sections 841(a)(1) Section 846, 848, 860 and 853.

**COUNT FORTY-EIGHT  
(CRIMINAL FORFEITURE)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. From in or about 1989 through in or about March of 1994, in the Eastern District of Pennsylvania and elsewhere, defendant PHILL GROSS did knowingly and intentionally violate Subchapter I of the Controlled Substances Act, Title 21, United States Code, Section 841(a)(1) and Section 846, as alleged in Counts Two through Seven of this Superseding Indictment, which counts are realleged and incorporated by reference, and which violations are punishable by imprisonment for more than one year.

2. As the result of the foregoing violations of Subchapter I of the Controlled Substances Act, defendant PHILL GROSS shall forfeit to the United States of America:

(A) any and all property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such violations of Subchapter I of the Controlled Substances Act; and

(B) any and all property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violations of Subchapter I of the Controlled Substances Act.

3. Any other property of the defendant up to the value of the assets and property described above shall be forfeited if any asset or property, as the result of any act or omission of the defendant: (a) cannot be located upon the exercise of due diligence; (b) has been trans-

ferred, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; and (e) has been commingled with other property which cannot be divided without difficulty.

In violation of Title 21, United States Code, Section 841(a)(1) Section 846 and Section 853.

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Grand Jury Foreman

/s/ Michael R. Stiles  
 MICHAEL R. STILES  
 United States Attorney  
 Eastern District of Pennsylvania

Date: 8/12/94

IN THE UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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[Caption Omitted in Printing]

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CHANGE OF PLEA HEARING  
 BEFORE THE HONORABLE EDWARD N. CAHN  
 UNITED STATES DISTRICT JUDGE

[2] (The following was heard in open court at 10:05 o'clock a.m.)

THE COURT: Okay. All right. We're ready to take pleas with Amanda Mitchell and Sylvester Thomas. Can we do this en masse or do you want to take the pleas separately?

MS. MILLER: I believe separately, your Honor.

THE COURT: Okay. Which do you want to take first?

MS. MILLER: Perhaps Amanda—Amanda Mitchell, your Honor.

THE COURT: All right. Would Amanda Mitchell and her attorney come forward please?

MR. MORLEY: Good morning, your Honor.

THE COURT: Good morning.

(Pause in proceedings.)

THE COURT: Miss Mitchell, my name is Judge Cahn, and I've been assigned to be the Judge for your case.

Your attorney advises me that you wish to change your plea from not guilty to guilty.

THE DEFENDANT: Yes.

THE COURT: Before I can accept that plea, we need to have a discussion to make sure that you understand your rights and that you understand the facts and



that you understand the range of punishment to which you could be subjected if you plead guilty.

What is your name?

[3] THE DEFENDANT: Amanda Mitchell.

THE COURT: How old are you?

THE DEFENDANT: 44.

THE COURT: How far did you go in school?

THE DEFENDANT: Finished twelfth.

THE COURT: Are you working now?

THE DEFENDANT: Yes, I am.

THE COURT: By whom are you employed?

THE DEFENDANT: Jumundi (ph) Foundation.

THE COURT: Are you married?

THE DEFENDANT: Yes.

THE COURT: Are you living with your—with your husband?

THE DEFENDANT: Yes.

THE COURT: Do you have any children?

THE DEFENDANT: Two.

THE COURT: How old?

THE DEFENDANT: 21 and 18.

THE COURT: They're both adults?

THE DEFENDANT: Yes, and a grandbaby.

THE COURT: Now, I'm going to place you under oath, and you'll be required to answer my questions truthfully or you could be charged with perjury or false swearing.

Don't be concerned about being honest with us because if you decide to have your trial instead of pleading [4] guilty, you—anything you say here cannot be used against you.

Kris, would you place Miss Mitchell under oath?

AMANDA MITCHELL, Defendant, Sworn.

AUDIO OPERATOR: Please spell and state your name for the record.

THE DEFENDANT: A-M-A-N-D-A, M-I-T-C-H-E-L-L, Amanda Mitchell.

THE COURT: Are you under the influence of any medicine this morning?

THE DEFENDANT: No.

THE COURT: Have you taken any alcohol in the last 24 hours?

THE DEFENDANT: No.

THE COURT: Are you under the influence of any drugs or controlled substances this morning?

THE DEFENDANT: No.

THE COURT: Have you ever had any psychiatric treatment?

THE DEFENDANT: No.

THE COURT: What is the state of your health today?

THE DEFENDANT: Fair.

THE COURT: Any problems that I ought to know about that affect the way you could think or anything like that?

THE DEFENDANT: No.

[5] THE COURT: Are you satisfied with Mr. Morley?

THE DEFENDANT: Yes.

THE COURT: Has he met with you and explained the law to you?

THE DEFENDANT: Yes.

THE COURT: Have you met with him and explained the facts to him as you know them?

THE DEFENDANT: Yes.

THE COURT: Now, you've been indicted by the Grand Jury—and would you tell us what counts she's charged in, Ms. Miller?

MS. MILLER: Yes, sir, with the Court's indulgence. May I approach the podium, Your Honor?

THE COURT: You may.

MS. MILLER: Miss Mitchell is charged in Count 2 of Indictment 94-159 with conspiracy to distribute more than five kilograms of cocaine; in Count 11, with the distributing and aiding and abetting the distribution of cocaine within a thousand feet of an elementary school; in Count 21—the Court's indulgence—with distributing and aiding and abetting the distribution of cocaine within a thousand feet of the same elementary school; and in

Count 28, with distributing and aiding and abetting the distribution of cocaine within a thousand feet of a playground.

THE COURT: All right. Do you understand what [6] you're charged with?

THE DEFENDANT: Yes.

THE COURT: In Count 2, you're charged with a conspiracy. A conspiracy means that you were acting with at least one other person to plan or commit—or attempt to commit a crime. It's the—it's like a partnership in crime, you and somebody else involved in criminal activity. It can be as simple as planning an activity or acting in some way to further the activity.

But what the Government must prove is that you intentionally joined the conspiracy with a mental purpose to evade the law and violate the law. And the gist of the charge of conspiracy is that you planned to commit a crime with at least one other person, that you intentionally joined a criminal group for that purpose.

In Counts 11, 21 and 28, you're charged with actually distributing cocaine or aiding and abetting the distribution of cocaine, that is, helping someone else do it, setting it up, acting as a courier for either the drugs or the money or something of that sort.

So you're charged in four counts. One—the second count is conspiracy, and Counts 11, 21 and 28 are distribution or aiding and abetting the distribution of cocaine within a thousand feet of a school, and in regard to Count 28, a playground. The penalties are higher when a [7] school or a playground are involved.

And another important factor is that you're charged in Count 2 with conspiring to distribute more than five kilograms of cocaine, and that makes the penalties more severe.

MR. MORLEY: Judge, we don't agree as to the quantity in this case.

THE COURT: I understand that you're going to contest her involvement in more than five kilograms.

MR. MORLEY: That's correct, sir.

THE COURT: And that's going to be determined at sentencing.

MR. MORLEY: Exactly, sir. And—

THE COURT: You're going to have a hearing on that.

MR. MORLEY: Right. And I've explained that to Ms. Mitchell.

THE COURT: Okay. But she should understand that if she loses that issue, penalties would be much more severe.

MR. MORLEY: Yeah, I've explained that to her.

THE COURT: Okay.

Now, it's very—the range of punishment here is very complex because we don't know how much cocaine the Government's going to be able to show you were involved in. So listen closely while we go over the range of penalties, and Ms. Miller will do that for us.

[8] MS. MILLER: On Count 2, Miss Mitchell faces a mandatory minimum of ten years up to a maximum of life imprisonment, a maximum fine of \$4 million, a mandatory minimum of five years up to lifetime supervised release; and a \$50 special assessment.

On each of Counts 11, 21 and 28, Miss Mitchell faces a mandatory minimum of one year imprisonment up to a maximum of 40 years imprisonment, a maximum fine of \$2 million, a mandatory minimum of six years supervised release up to lifetime supervised release, and a \$50 special assessment.

On all counts, Miss Mitchell would face a total of a mandatory minimum of ten years up to a maximum of lifetime imprisonment, a \$10 million fine, a mandatory minimum of six years up to lifetime supervised release, and a \$200 special assessment. That would be on all counts.

THE COURT: Okay. Now, the penalties you just set forth, Ms. Miller, assume there's a five-kilogram involvement?



MS. MILLER: That's correct, sir.

THE COURT: So those are the penalties if the Government can prove that you were involved in five kilograms of cocaine distribution. Your lawyer says you're not, is that right?

MR. MORLEY: That's correct, sir.

THE COURT: So if you're not, then the penalties [9] would be less. What do you think the quantity is going to come out to be?

MR. MORLEY: Judge, we would—we believe the penalty—the quantities are as specified in the three substantive counts, which is about 85—I believe it's between 50 and 100 grams of—

THE COURT: And what would the penalty be in that case?

MR. MORLEY: The penalty in that case is, I believe, a maximum of ten years. And the—what I've discussed with—at length with Miss Mitchell is the Sentencing Guideline range as well.

THE COURT: And what would that be?

MR. MORLEY: The Guideline range in that is 15 to 21 months, not including various adjustments for—

THE COURT: Acceptance—

MR. MORLEY: —acceptance of responsibility, level of participation. I've explained to her that there are a fudge factor of points going up and down. I've showed her the graphs and how that might work.

THE COURT: More than minimal planning could add it—

MR. MORLEY: More than minimal—

THE COURT: —add to it.

MR. MORLEY: —could add to it, and minimal [10] participation could subtract to it—

THE COURT: Do you think—

MR. MORLEY: —from it.

THE COURT: —do you plan to make a plea to me that, at sentencing, that there should be an non-incarceration sentence?

MR. MORLEY: It's my hope to either make a non-incarceration or a—or some form of house arrest, a home detention.

THE COURT: Okay. And the Government's going to oppose that at this point?

MS. MILLER: Yes, sir. The Government will have to ask for a term of imprisonment. As the Court is aware, this is not a cooperation plea. As counsel has indicated, there is no cooperation anticipated at this time with respect to this defendant.

And, Judge, I must—I must note for the record that under 21, USC 860(a), which is the offense involved in Counts 11, 21 and 28, each of those counts does carry a mandatory minimum of one year imprisonment even if the Court finds, as counsel has suggested he will argue, that the only amounts involved were the small amounts of cocaine sold on those days.

And that section carries a statutory possible maximum of up to 40 years imprisonment because the offense [11] occurred within a thousand feet of a school.

THE COURT: Does the mandatory minimum on the three counts—is the—the mandatory minimum would still be one year—

MS. MILLER: Correct.

THE COURT: —even though there's three counts? All right.

MS. MILLER: Even if all three counts are—are consecutive, so to speak, it's still just a one-year mandatory minimum.

THE COURT: You're going to argue to the contrary?

MR. MORLEY: At—no, your Honor.

THE COURT: All right. Well, then your client needs to understand that—

MR. MORLEY: Understand that she's facing at least one year in jail.

THE COURT: —that you're going to do at least one year in jail for this. Because what Ms. Miller says sounds

right to me on the law, that is, that there's a minimum mandatory for the school and playground counts even if the amount of the cocaine is as small as Mr. Morley and you say it is. I still would have—my hands would be tied. I'd have to sentence you to at least one year in jail on those counts.

Now, if Ms. Miller thinks there's more cocaine [12] involved, she's going to argue on Count 2 that some of the quantities that other people were dealing in are attributable to you because you knew about it and were helping them in the operation. You're going to deny that, as I understand?

MR. MORLEY: That's correct, sir.

THE COURT: And I'll have to make that decision. But the point you need—what you should have in your mind is what's this Judge going to do with that problem? Is he going to be harsh with me and give me a ten-year minimum mandatory if it's more than five kilograms or a five-year if it's more than 500 grams?

And I just have—I don't know what I'm going to do with that. I'm going to have to hear the evidence and find out how serious your involvement in this case was. If it's like Mr. Morley says, then it's going to be one year. If it's like Ms. Miller says, it could be a ten-year minimum mandatory.

So you're exposing yourself to serious punishment depending on the quantity involved.

Now, there's also Sentencing Guidelines. What are the Sentencing Guidelines if it were the minimum amounts, less than 100 grams?

MR. MORLEY: Less than 100 grams, Judge, I believe it was—

THE COURT: 15 to 21 months?

[13] MR. MORLEY: —15 to 21 months.

THE COURT: Okay. So there's also a possibility than it could be more than 12 months by several months if that's the applicable Guideline.

Your lawyer is going to argue that it should be less than 15 months because you're pleading and accepting responsibility. The Government is going to argue that you should do 15 months probably, if it comes in at 100 grams or less.

You also need to know that if you plead guilty to the four counts, there will be a \$200 special assessment. I could impose a fine against you, but I assume you cannot—you don't have much money to pay a fine, am I right?

THE DEFENDANT: Right.

THE COURT: So if you're—if you don't have any money, then you won't be subject to a fine. You will have to be on supervised release for between six years and life after you get out of jail, and we'll have to argue about that at your sentencing. Your lawyer is going to argue for six years. The Government may argue for longer.

You should understand that supervised release is like probation or parole. You'll be out, but if you violate your probation or parole, in this case, your supervised release, you can be sent back to jail even if you've had a lot of good time on your supervised release for—suppose I [14] give you—suppose you do a year in jail and six years on supervised release.

You do your year. You do five and a half years on supervised release and no problems; the last six months, you have a dirty urine or something like that, you can go back to jail for a substantial period of time even though you've done five and a half months of good time on supervised release without incident.

Are you a citizen of the United States?

THE DEFENDANT: Yes.

THE COURT: Now, you're giving up a number of your rights by pleading guilty. One set of rights that you're giving up are your pretrial rights. You have the right to file motions to suppress evidence. The Government here was using electronic surveillance and wiretaps. They have to do that according to the law. If they made any mistakes, you can move to suppress the evidence.



If you made any statements when you were arrested without being warned that you could have an attorney or of your right to remain silent, Mr. Morley could move to suppress that evidence.

If you were searched without a warrant, he could move to suppress that evidence. These are some of the things you and he should have been speaking about. The point is, if you plead guilty today, all of your rights to attack the [15] Government's procedures pretrial are gone, including any misconduct before the Grand Jury.

Now, you have a right to plead guilty, and you also have a right to go to trial. Even though you and the U.S. Attorney's Office have worked out this plea agreement, you can still back out. It's not binding on you until you say it in open court and I approve it, and that hasn't happened yet.

If at any time you get queasy about this arrangement or you want to think it over or anything like that, just step to the side with Mr. Morley, and you can go over it with him privately, outside of my hearing. If you have any questions of me, stop me, and I'll be happy to explain it to you.

You should understand that pleading guilty has the same effect as if 12 people in the jury box find you guilty. Then there—if you plead guilty, there won't be a trial, and what will happen is that in January, you'll be brought in for sentencing.

You give up all of your rights to have a trial if you plead guilty. The most important right at a trial is the right to the presumption of innocence and the requirement that the Government prove its case against you beyond a reasonable doubt.

If you plead guilty today, those very important rights are gone.

You have the right to have your case decided by a [16] jury who's selected—after your attorney has the right to challenge jurors for cause or peremptorily, even if he doesn't like the way they look. You can participate

with him in jury selection, which is what we're going to do as soon as we're finished with the two pleas we're taking.

You give up the right to confront and cross-examine the Government's witnesses against you. You have the right at trial to remain silent under the Fifth Amendment, or at your option, you can take the stand and tell the jury your side of this controversy.

You may present witnesses in your behalf including character witnesses.

If you plead guilty, all of those rights are gone.

Mr. Morley has the right to make an opening statement to the jury and a closing argument. That right is gone if you plead guilty.

He also has the right to submit points of law to me to read to the jury. That right is gone. If he loses the case, he can appeal. And if he—and if you go to the jury on this case, you can only be convicted if the jury is unanimous.

If you plead guilty, all of those trial rights are gone.

Now, you should understand that there's some—there's some uncertainty in what your punishment is going to [17] be. If after—if at the sentencing hearing, it turns out that your involvement with drugs is more extensive than Mr. Morley tells—is telling me now, you'll be punished more severely. But at that point, you can't say, "Well, Judge, then I'll take my chance on a trial."

If you plead guilty today, that's the end of it and you can't come back later and change your mind. That's why we're being very careful to go over everything with you.

I take it there's no plea bargain here, Mr. Morley?

MR. MORLEY: There's no plea agreement, Judge.

THE COURT: It's an open plea to Counts 2, 11, 21, and 28?

MR. MORLEY: That's correct, sir.

THE COURT: And you're getting no other promises from the Government?

MR. MORLEY: That's correct, sir.

THE COURT: And you're giving none?

MR. MORLEY: And we're giving none.

THE COURT: Okay. This is what we call an open plea. You're pleading to these charges. The Government is not giving you anything, and you're not giving the Government any cooperation, is that—is that correct? Would you say yes or no so we pick it up?

THE DEFENDANT: Yes.

THE COURT: And nobody else has promised you [18] anything?

THE DEFENDANT: No.

THE COURT: Nothing in the back room or anything that I don't know about?

THE DEFENDANT: No.

THE COURT: Okay. Ms. Miller, will you state the factual basis for the charges against Miss Mitchell? And, Miss Mitchell, you listen to what she says, and if there's anything wrong, you correct it after she's finished.

MS. MILLER: Yes, sir. With respect to Count 2, the Government's evidence would include eyewitness testimony as well as consensually recorded and taped conversations, as well as—and agent surveillance showing the following:

That during at least 1992 and 1993 at various times, Amanda Mitchell was part of a group of individuals headed in part by Harry Riddick, who distributed cocaine on a daily basis, daily and weekly basis, to customers in the Allentown, Pennsylvania area.

Miss Mitchell was, on occasion, provided vehicles and pagers and cocaine by Harry Riddick for distribution to customers approved by him and by other supervisors within the group. And at various times, she did distribute cocaine as part of this group, taking advantage of the facilities provided by Harry Riddick and others.

With respect to Count 11, the Government would prove [19] through eyewitness testimony and consensually recorded conversations and agent surveillance that on April 9th, 1992, at the location indicated, Miss Mitchell did

assist another individual in distributing a quantity of cocaine within a thousand—to a customer within a thousand feet of the Washington Elementary School.

With respect to Count 21, the Government's evidence would show through eyewitness testimony, a consensually recorded conversation and agent surveillance that on the date indicated and at the location indicated, Miss Mitchell did distribute a quantity of cocaine to a customer within—at a location within a thousand feet of the Washington Elementary School.

And finally with respect to Count 28, the Government's evidence would show that on the date indicated and at the location indicated in that count, that Miss Mitchell did distribute a quantity of cocaine to a customer within a thousand feet of the Franklin Playground on those dates mentioned.

THE COURT: Did you do that?

THE DEFENDANT: Some of it.

THE COURT: What didn't you do?

THE DEFENDANT: The—the first one.

THE COURT: Which is?

THE DEFENDANT: I think 11.

[20] MR. MORLEY: The first one—well, you were with—

THE DEFENDANT: There was four other people there.

MR. MORLEY: Yeah.

THE DEFENDANT: Yeah.

MS. MILLER: Perhaps she's referring to Count 11?

MR. MORLEY: Count 11?

THE DEFENDANT: Is that 11?

MR. MORLEY: Yeah.

THE DEFENDANT: That's the one. Four people? I wasn't there.

R. MORLEY: Excuse me, Judge. May I just speak with Miss Mitchell?

THE COURT: Sure.



MR. MORLEY: Thank you.

(Pause in proceedings.)

MR. MORLEY: Judge, we've clarified that point. She was looking at the indictment that listed four people, and didn't recall that there were four people there that day. And, in fact, what it is, is there is aiding and abetting.

There are persons who are considered aiders and abettors who were not present. She agrees she was present and participated in a manner that was described in the discovery.

THE COURT: Is that correct, Miss Mitchell?

THE DEFENDANT: Yes.

[21] THE COURT: You remember now that you have some involvement with Count 11?

THE DEFENDANT: If they say I did. I don't remember.

MS. MILLER: Your Honor, If I could clarify briefly? On that date in question in Count 11, the circumstances were that the customer had paged Harry Riddick, that among the events that occurred, James Adams called back to let the customer know that someone would be coming shortly to deliver the cocaine. And the two individuals who arrived to deliver the cocaine were Richard Thompson and Amanda Mitchell.

It was Richard Thompson who physically had the cocaine in his possession and physically turned it over to the customer. However, Miss Mitchell was present for the purpose of being introduced to this customer so that in the future Miss Mitchell would also be known to that customer and would be able to sell cocaine to her.

And in that sense, by accompanying Mr. Thompson, not only for the purpose of getting to know the customer but also for the purpose of assisting in this delivery, Miss Mitchell aided and abetted that distribution, although she did not personally hand over the cocaine to the customer on that date.

She later did deal with that customer as indicated in the subsequent counts of the indictment.

[22] MR. MORLEY: Judge, what Miss Mitchell explained to me was that she was there that day, and basically was part of that in the manner that the Prosecutor has described, a part of that delivery. And I explained to her what aiding and abetting involves.

However, she does not agree with the Government's purpose for—that is, she was introduced to that customer for future deliveries, since she knew that person for years already. But she was, as far as I understood, from both from my client as well as from the discovery, aiding and abetting that delivery.

THE COURT: I don't think it makes much difference in the punishment, but she does have some defense to Count 11. She could say she was merely present.

MR. MORLEY: I agree, Judge, that's a mere presence argument as to one count.

THE COURT: And that she really didn't do anything. She didn't take a step to further the transaction. And you could argue that the purpose—her being there to be introduced for future deals is not aiding and abetting the deal that went down on the—in Count 11.

So it's okay with me if you want to plead with—to Count 11, if you understand that you do have a defense to it, and you could stand trial on that defense. I don't know if your defenses to the other counts are as good. They probably [23] aren't, but I don't know that.

I'll permit you to plead guilty to Count 11 even if you have a defense to it, because I don't think it's going to make too much difference in your sentencing. But that's your choice.—You have a—you—I don't want you really to plead to something you didn't do, or that the Government can't prove you did. And that's your choice. So you have a right not to plead guilty and stand trial on all these things if you want to.

You should know this, that if you stand trial on these things, it's possible it could get worse for you, but it's possible you could win. It's sort of a risk that you would be taking.

THE DEFENDANT: Okay. I'll plead guilty to that one.

MR. MORLEY: Okay.

THE COURT: So do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: Okay. Mr. Morley, do you have any questions of Mr. Leh, the case agent?

MR. MORLEY: Not at this time, Judge.

THE COURT: Ms. Miller, do you have any questions of Mr. Leh?

MS. MILLER: No, sir.

THE COURT: Do you have any questions of your [24] client?

MR. MORLEY: No, sir.

THE COURT: Miss Mitchell, do you have any questions of me?

THE DEFENDANT: No, sir.

THE COURT: I'm asking both counsel, are you satisfied that if Miss Mitchell changes her plea, she would be doing so knowingly, intelligently and voluntarily?

MR. MORLEY: I agree, Judge, she would be doing so.

MS. MILLER: Yes, sir.

THE COURT: All right. Miss Mitchell, I find that you understand the nature of the charges against you. I find that you understand what a conspiracy is and that what distribution of cocaine is, and what aiding and abetting the distribution of cocaine is.

I find that you have a possible defense to Count 11, but that if you wish to plead guilty anyway. I would accept your plea.

I find that there's a factual basis for the plea. I find that you understand your pretrial rights, your trial rights.

I find that you understand as well as it can be understood the range of punishment to which you're exposing yourself including imprisonment. It looks like a minimum of one year and supervised release of a minimum of six years, all the way up to life on supervised release.

[25] So you have—I think you have a full and completely understanding of what you're facing and what the tradeoffs are.

Are you doing this of your own free will?

THE DEFENDANT: Yes.

THE COURT: Miss Mitchell, you previously pleaded not guilty at Criminal Number 94-159, to Counts 2, 11, 21 and 28.

How say you now to Counts 2, charging you with conspiracy to distribute cocaine; Count 11 and 21, charging you with distribution and/or aiding and abetting the distribution of cocaine within 1,000 feet of a school; and Count 28, charging you with distribution or aiding and abetting distribution within 1,000 feet of a playground, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: I'll accept your guilty plea. What kind of bail do we have here?

MS. MILLER: Your Honor, I—I'm afraid blanking on the conditions of bail, but the Government would ask that they continue. I don't think its OR bail. I think something was posted for it.

THE DEFENDANT: OR.

THE COURT: What kind of bail is there, Mr. Morley?

MR. MORLEY: I believe—I believe she's on OR, but [26] with—with restrictions and conditions attending employment, and for a while, I think you were getting drug treatment?

THE DEFENDANT: Uh-huh.

MR. MORLEY: There was drug treatment, drug screening for a while.



THE COURT: We'll allow some bail to continue, and you may—why don't you take her to the Probation Office—

MR. MORLEY: I will, Judge.

THE COURT: —and see that they can set up a pre-trial sentence arrangement for her. She should continue to report to the Pretrial Services Officer as she's been doing.

MR. MORLEY: Fine, Judge.

THE COURT: Mr. Smith, when will we have sentencing in this case? Okay. We'll schedule sentencing some time in January, I would think.

MR. MORLEY: Okay.

THE COURT: Thank you, Mr. Morley.

MR. MORLEY: Thank you, Judge.

THE COURT: Miss Mitchell, you may be excused.

(Proceedings concluded at this time.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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[Caption Omitted in Printing]

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SENTENCING HEARING  
BEFORE THE HONORABLE EDWARD N. CAHN  
UNITED STATES DISTRICT JUDGE

[2] (The following was heard in open court at 1:35 o'clock p.m.)

(The Judge's microphone was not on, and therefore, the transcript contains many inaudibles.)

THE COURT: We're going to start with Amanda Mitchell.

MS. MILLER: Yes, sir.

THE COURT: I have your sentencing memorandum. Do you have anything else to add?

MS. MILLER: Sir, the Government has brought to court, and I wish the case agent were right here. Paul Belfield is present in the courthouse, and—should counsel wish to cross-examine him about his testimony at trial. Shannon Riley is present should counsel wish to cross-examine her about her testimony at trial; also Richard Thompson.

With respect to Richard Thompson, your Honor—

THE COURT: The case agent is here now.

MS. MILLER: Oh, good. Would you bring Richard Thompson up.

With respect to Richard Thompson, your Honor, the Government does call Richard Thompson to provide additional details concerning time periods and amounts of cocaine involved with Miss Mitchell because he was not

asked expressly about Miss Mitchell at trial, since she was not on trial.

[3] The Government—the Government anticipates that, from my point of view, that testimony will be brief, about ten minutes. And he should be right outside, and he should be brought in immediately to do that. So the Government will be relying on the testimony of those three individuals with respect to Miss Mitchell, and that's it.

And I apologize for the delay, your Honor. I thought Mr. Thompson would be in here when we started.

THE COURT: We have plenty of time.

MS. MILLER: But he should be here in a minute, and I appreciate the Court's patience.

THE COURT: If you want to give me—as long as we're waiting, why don't you give me your calculations of the quantities. Do you—are you relying on the probation officer's calculations—

MS. MILLER: Yes, sir.

THE COURT: —or do you have some of your own?

MS. MILLER: No, sir. The Government is relying on the probation officer's calculations.

(Pause in proceedings.)

MS. MILLER: That would be as set forth in Paragraph 150 on Page 23. The Government submits that, based on the trial testimony plus the matters that Mr. Thompson will testify to—I see he's in the courtroom at this time. Well, perhaps I should go over that after Mr. Thompson has [4] testified.

THE COURT: Okay.

Mr. Thompson, you may take the stand please, and you may be sworn.

RICHARD THOMPSON, Government's Witness, Sworn.

AUDIO OPERATOR: Please spell and state your name for the record.

THE WITNESS: Richard Thompson, R-I-C-H-A-R-D, T-H-O-M-P-S-O-N.

MS. MILLER: May I proceed, your Honor?

THE COURT: You may.

MS. MILLER: Thank you, sir.

## DIRECT EXAMINATION

BY MS. MILLER:

Q Mr. Thompson, do you adopt your testimony given at the trial of United States versus Harry Riddick as your testimony for purposes of this proceeding?

A Yes.

Q I have some additional questions to ask you.

Sir, directing your attention specifically to the time period April of 1992 and May of 1992, did you have occasion to work with Amanda Mitchell?

A Yes.

Q And would you tell the Court how that came about, how Amanda Mitchell came to work with you?

[5] A I was informed that she was going to be working with us and I had to take her around by Harry.

Q Okay. And did you have an opportunity to observe how many days per week Miss Mitchell was working for Harry Riddick?

A Yes.

Q And how many days per week was that?

A Basically, two to three.

Q I'm sorry, sir?

A Between two to three.

Q Now, at that time, how much—would you review for the Court how much cocaine you would receive from Harry Riddick in what was called the big bag at the beginning of your workday?

A We got a bag, approximately, an ounce and a half to two ounces.



Q Okay. And did Amanda Mitchell share your bag or did she get a separate bag?

A She had a separate bag.

Q From whom?

A From Harry.

Q And—

MR. MORLEY: Judge, I couldn't hear the answer.

THE WITNESS: From Harry.

BY MS. MILLER:

[6] Q And when you say Harry, do you mean Harry Riddick?

A Yes.

Q Were there occasions when Harry Riddick gave you what had to be taken to Amanda Mitchell for her to sell that day?

A Yes.

Q And at that time, did you have—did you actually hold that bag in your hand?

A Yes.

Q And did you have an opportunity to observe how much cocaine was in that bag?

A Approximately the same amount that I had in my bag.

Q All right. Now, directing your attention to the time period June of 1992 through August of 1992, at that point, were you—did you have possession of Harry Riddick's beeper at that point in June, '92, through August, '92?

A Yes.

Q And did there come a time when Amanda Mitchell worked for you?

A One time.

Q When you say one time, explain to the Court what you mean.

A One day.

Q Okay. And after that one day, what, if anything, happened so that Amanda Mitchell stopped working for you?

A Just was told—I was just told that she didn't want to [7] work no more for me.

Q And who told you that?

A By Harry.

Q Okay. Thereafter, however, what, if anything, did you determine about what Amanda Mitchell was doing in that June, '92, through August, '92, time period?

A I was told that she would be—

MR. MORLEY: Objection, your Honor.

THE COURT: Overruled.

MR. MORLEY: Foundation, Judge, I—I was told by whom, where, when?

THE COURT: All right. Lay a foundation.

BY MS. MILLER:

Q Mr. Thompson, who were you speaking with who told you about—

A Kathy.

Q —Amanda Mitchell's activities?

A Kathy.

Q Who is Kathy?

A Hottenstein.

Q Okay. And did Kathy Hottenstein tell you about Amanda Mitchell's activities in June through August of '92?

A That she was probably going to be at Phill's working over there.

Q Who was going to be at Phill's?

[8] A Amanda.

Q And when you say working over at Phill's, what did you understand her to mean?

A Possibly just selling over there.

Q Selling what?

A Cocaine.

Q Now, directing your attention to the time period August of 1992 through about December of 1993, did something different happen that covered that whole time period, August, '92, to about December of '93.

A Kathy was in charge of the pager then. She was running the things. Amanda was working for Kathy.

Q Okay. Now, how often were you with Kathy Hottenstein during this period August '92, through late—

A It varied, almost every day, every other day.

Q Did you have an opportunity to observe yourself how many days per week Amanda Mitchell worked under Kathy Hottenstein's supervision?

A Anywhere between three to five.

Q Three to five—

A Three to five days a week.

Q Okay. Per what?

A Per week.

Q Okay. And were you ever present when cocaine was being bagged by Kathy Hottenstein?

[9] A Yes.

Q Was Amanda Mitchell ever present on those occasions?

A I wasn't there, but she said she was either over there with her or she went over to her house, or she came over to her house.

Q Who said—

A Kathy either went over to Amanda's house, or Amanda was over at Kathy's house during certain times.

Q To do what?

A To bag.

THE COURT: Did you see this or were you told this?

THE WITNESS: I was told this.

THE COURT: By whom?

THE WITNESS: By Kathy.

BY MS. MILLER:

Q And when you were with Kathy Hottenstein, did there come a time when you saw Amanda Mitchell receive something from Kathy Hottenstein?

A Yes.

Q What did you see Amanda Mitchell—

A A bag of cocaine.

Q Were you able to observe how much cocaine Kathy Hottenstein was providing to Amanda Mitchell?

A Yes.

Q How much?

[10] A Broken up bags, between, like I say, an ounce and a half, two ounces.

Q And how frequently did you observe that to occur?

A That varied during the week.

Q All right. Now, directing your attention to the time period December, 1993, around December of 1993, did something else change, late 1993, January, '94?

A Kathy stopped—Kathy stopped, I know.

Q Kathy stopped doing what?

A Being in charge of the pager.

Q Okay. And at that point, what, if anything, did Kathy Hottenstein tell you occurred when she gave up the pager?

A That Lori and Amanda was in charge.

Q And how long did that continue?

A A couple months, two to three.

Q When you say a couple months, just give the Court your best estimate.

A Anywhere between two to three, anywhere between two to three.

Q Okay. And so what—what end—what end time period would you put on that? Are we talking 1994 or what?

A '93 into '94—into '94.

Q Okay.



MS. MILLER: I have no other questions of this witness, your Honor.

[11] THE COURT: You may cross-examine.

MR. MORLEY: Thank you, your Honor.

### CROSS-EXAMINATION

BY MR. MORLEY:

Q Mr. Thompson, you haven't been sentenced yet, is that correct?

A No, I haven't.

Q Okay. And you're going to be sentenced by Judge Cahn?

A Yes.

Q Okay. And that is after you've completed testifying in this case?

A I don't really know when.

Q You don't know when, okay.

Do you recall giving a—meeting with the Government back in July of '95?

A Yes.

Q Okay. And do you recall meeting with them and discussing with them everything you knew about the case?

A Yes.

Q Okay. And at that time, you were seeking to cooperate with them, is that correct, with the Government?

A I guess it was to make a plea, I guess.

Q Okay. Well, and part of the plea would be a cooperation plea so that you could receive a lesser sentence, is that correct?

[12] A Probably.

Q Now, when you did that, you, of course, wanted to give as full and complete disclosure of everything you knew about this to try to make the best possible deal for yourself, right?

A Just to give a disclosure, period. I don't know about making the best deal.

Q Well, but you wanted to be honest and truthful with the Government, right?

A Right.

Q Okay. Because you didn't want to be lying to the Government and then have it come back on you some time later, right?

A Correct.

Q So you told them everything that you've told us today, is that correct?

A Correct.

Q Okay. Well, Mr. Thompson, I'd like to show you what I've been furnished as a DEA-6, and I don't believe there's anything in here regarding your testimony that Amanda Mitchell was in charge for a couple of months in '94, and I don't believe there's anything in here—

MS. MILLER: Your Honor, I object to what counsel believes. If he could just ask the witness some questions about—

[13] BY MR. MORLEY:

Q Well, did you tell—did you tell the Government all about how Amanda Mitchell was in charge from December—was one of the people in charge of this organization or in charge of distributing?

A I wasn't questioned on that.

Q What?

A I was not questioned at the hearing—or, I mean, at the trial.

Q No, I'm talking about—I'm not talking about the hearing. I'm talking about your interview with the Government in July of '95, about a year ago.

A Not that I can recall.

Q So you didn't tell them about that?

A Not that I can recall, no.

Q Okay. And you didn't tell them that you observed Amanda Mitchell from August of '92 until December of '93 delivering three to five times a week, did you?

A I wasn't asked that, no.

Q You didn't—well, you were there to disclose—

A Right.

Q —what you knew about the organization?

A I wasn't asked that, right.

Q You were there to disclose what you knew about the organization, right?

[14] A Correct.

Q And you did not tell them that?

A I was not asked that.

Q Well, did you—were you asked to tell who the people were that were involved in this?

A I was asked who was—as far as conspirators, yes, as far as they called us—

Q Okay.

A —who was running, right.

Q Well, you did tell them something about Amanda Mitchell, right?

A Who was running, right.

Q Okay. And at that—and you told them that Rid-dick had one to three couriers working each day, and you named five couriers, and Amanda Mitchell was one of them—

A Right.

Q —one of the people you named? And that's about all you said about Amanda Mitchell at that time, about a year ago, right?

A Correct.

Q And you were specifically asked about incidents in 1993, and you made no mention of Amanda Mitchell in 1993, doing anything in '93, is that correct?

A Not at the time, no.

Q Okay. Okay. Now, you also—you were with Amanda [15] Mitchell when she made a delivery in April of '92 to Alvita Mack (ph)?

A Right.

Q And that was purportedly to introduce you to—introduce Amanda Mitchell to Alvita Mack, is that correct?

A Right.

Q Were you aware that Amanda Mitchell had known Alvita Mack for years?

A No.

Q Were you aware that they had gotten high together for years?

A No.

Q Okay. So you weren't aware of that at that time?

A I wasn't aware of it at all.

Q Okay. You continued to supply Alvita Mack with cocaine on a regular basis, is that correct?

A Correct.

Q Okay. Now, can you tell me where Amanda Mitchell was in, let's say, early to mid September of '92?

A Can I tell you where she was? No.

Q Was she—was she working in early to mid September, '92?

A I was out of it then.

Q Excuse me?

A I was out then.

[16] Q You were out then. Where were you?

A I was not working.

Q You were not working?

A Right.

Q What periods of time were you not working for this organization or for—dealing drugs?

A Between late August and October to November of '92.



Q To November of '92. When you say you were out, that meant that you were not seeing on a daily basis who was delivering to who and who was a courier?

A Correct.

Q Okay. Were you aware that Amanda Mitchell was in Florida for several weeks in September of '92?

A No.

Q Okay. But you didn't know where she was in the fall of '92, is that correct?

A Correct.

Q So to the extent that your testimony today was from August, '92, to December, '93, that you observed Amanda Mitchell three to five times a week being under Kathy's supervision, that's not correct because for at least several months of that period of time you didn't observe Amanda Mitchell, right?

MS. MILLER: Objection, compound question.

THE COURT: Reframe.

[17] MR. MORLEY: Okay.

BY MR. MORLEY:

Q You were not—you didn't see anybody—you testified earlier that between August, '92, and December, '93, you saw Amanda Mitchell delivering cocaine three to five times a week under Kathy Hottenstein's direction, correct?

A Correct.

Q Okay. But that's not entirely correct because you've just told us from August to November of '92, you didn't know what was going on in that organization, right?

A You said in September did I see her.

Q No. I just asked you from August—well, you told us from August to November, you were out of commission, right?

A Uh-huh.

Q And you earlier told us for about 15 months, from August, '92, to December, '93, you saw Amanda

Mitchell delivering cocaine three to five times a week, remember that, on direct examination?

A Correct.

Q Okay. That's not entirely correct because you didn't see anything in the fall, from August—the fall of '92, from August to November of '92, correct?

A I did see.

Q You did see?

A Right.

[18] Q You saw Amanda Mitchell—

A Right.

Q —from August to November?

A In between there, right.

Q In between there. How many times?

A I said between three to five times a week.

Q Every week even though you were not involved?

A I wouldn't say every week. I was not involved, but I was around Kathy at the time.

Q So you weren't keeping regular tabs on is what you're telling us, right?

A Well, about what Kathy was telling me.

Q This was what Kathy was telling you?

A Correct.

Q Okay. So you didn't actually see Amanda Mitchell—

MS. MILLER: Objection.

MR. MORLEY: —delivering those drugs.

MS. MILLER: Objection. Asked and answered.

THE COURT: Overruled.

BY MR. MORLEY:

Q You didn't actually see Amanda Mitchell with drugs at that time?

A I seen Amanda with the bag that either Kathy had gave her or that she was running for her.

Q But I thought you just told us you weren't around during [19] August to November, '92?

MS. MILLER: Objection, asked and answered.

THE COURT: Overruled. You may press.

BY MR. MORLEY:

Q I thought you just told us you weren't around the scene between August—

A I was not around running—

Q Let me finish the question—between August, '92, and November, '92?

A I was not around running—

Q Okay.

A —making deliveries. I was around Kathy Hottenstein at that time.

Q Okay. And around that time, you would see—on occasion, you would see Amanda Mitchell, or would you see her regularly, three to five times a week?

A Later on, yes.

Q What do you mean, later on?

A Later on in the year, later on towards the end of the year.

Q You mean like December, '92?

A It was around that time or before.

Q Okay. Fine. What I'm asking you about, though, is August to November, '92. What you're telling us is you didn't see? You keep avoiding that time period. You didn't [20] see in that time period, is that correct, sir?

A I'm telling you I wasn't involved at that time period, that Kathy was running the show and that Amanda was working for Kathy.

Q And that's the information you got from Kathy, right?

A Correct.

Q Okay. Now, from December, '92, to December, '93, were you back in with Kathy at that point in time?

A I wasn't quite really out with Kathy at that time.

Q Okay. Well, were you seeing her on a more regular basis? Were you living with her at that time?

A No.

Q How often would you see her?

A I guess approximately every day, every other day.

Q Okay. And during that time, it's your testimony that Amanda Mitchell was doing drugs three to five times a week under Kathy's direction, correct?

A Correct.

Q Were you present when Kathy bagged up the drugs?

A Yes.

Q Were you present when she delivered them to Amanda Mitchell?

A Yes.

Q And on how many occasions, did you do that, were you there when she did that?

[21] A I don't quite recall.

Q Can you recall any dates at all when she did that?

A Dates, no.

Q Can you recall any time periods at all?

A '93.

Q '93? Just '93?

A Well, you said dates in between. As far as actual dates, anywhere between January, February, on up to—maybe towards the middle—

Q Towards the—

A —off and on.

Q Towards the middle of '93?

A Right.

Q Okay. And then toward the middle of '93, what happened, it kind of tapered off?

A Some things I just didn't see.

Q Oh, you didn't see things after the middle of '93?

A Some things I just didn't see, right.

Q Okay. The things—the things that you didn't see were just things like who was getting the drugs?

A Correct.



Q Okay. So that would have been from the middle of '93 on? You have to answer yes or no, sir. You can't—

A I would assume, yes.

Q Okay. You can't just nod your head is what I'm saying.

[22] A All right.

Q So from the middle of '93 on you didn't see? Okay.

(Pause in proceedings.)

Q Now, you also told us about the time period of June to August of '92 when you had possession of Harry Riddick's beeper, right?

A Uh-huh, right.

Q Was that—you have to answer yes or no.

A Right.

Q Okay. And during that time period Amanda worked for you one day?

A Correct.

Q Okay. And do you recall what day that was?

A No.

Q Do you recall how much money she brought back from the sales of drugs?

A It wasn't much, maybe about three or 400.

Q But you don't recall specifically?

A No.

Q And you were told during that time period that she didn't—she had previously been making deliveries but you were told that during that time period, she didn't want to work anymore, is that right?

A For me, right.

Q Who told you that?

[23] A Harry.

Q Harry. And what you found out later from Kathy was that she was working at Phill's Bar?

A I did.

Q Is that what you found out?

A Yes.

Q And Kathy told you that?

A Correct.

Q Did you ever see Amanda at Phill's Bar?

A No. Working-wise? No.

Q Okay. She would go there to hang out, right?

A More or less.

Q To get high there, right?

A I wouldn't know.

Q You wouldn't know.

(Pause in proceedings.)

MR. MORLEY: Beg the Court's indulgence, let me just—

THE COURT: You may have indulgence.

MR. MORLEY: Thank you, Judge. I'm just—cases and transcripts.

(Pause in proceedings.)

BY MR. MORLEY:

Q Now, you did testify at trial about Amanda, correct?

A Yes.

[24] Q Okay. You just added some new things to your testimony today regarding her activities, is that correct?

A Correct.

Q And, Mr. Thompson, you are—you've plead guilty to conspiracy and related charges in this case?

A Correct.

Q Okay. Have you gone to jail yet?

A For what?

Q For this case? You haven't been sentenced yet? Have you been out on bail the whole time?

A Yes.

Q Okay. And you understand that the Government, if you continue to cooperate with the Government, you'll—they will make a motion to his Honor, Judge Cahn, so

that you can receive a sentence below the Guidelines, is that correct?

A Correct.

Q And also below the mandatory minimum, is that correct?

A I just know below the Guidelines. I don't know anything further.

Q Okay. Do you know what your Guidelines are without this motion?

A Ten to life.

Q And you don't want to go to jail for as much as ten years or as much as life, is that correct?

A I don't believe anybody would.

[25] Q Okay. Well, specifically you don't want to, is that correct?

A Yes.

Q Were you aware of Amanda Mitchell's drug use during '92?

A As far as totally being aware of?

Q Did you ever notice of her using?

A I never seen her using.

Q You didn't see her using?

A No.

Q Did you see her with the effects of drug use?

A The what?

Q The effects of drug use? Did you—

A I haven't seen her using. I wouldn't know what the effects of them on her.

Q You yourself were a drug user between '92 and '94, is that correct?

A Correct.

Q And that would have been the time period that you are testifying about today?

A Correct.

Q Okay. And you were using cocaine during that period of time?

A Correct.

MR. MORLEY: I have nothing further. Thank you, Judge.

[26] THE COURT: Do you have any redirect?

MS. MILLER: Oh, no, sir.

THE COURT: Mr. Thompson, you may step down.

THE WITNESS: Okay.

(Witness excused.)

THE COURT: You may call your next witness.

MS. MILLER: Your Honor, the Government does rely on the testimony of Paul Belfield and Shannon Riley. They are both in the courthouse.

THE COURT: And they're available for cross-examination?

MS. MILLER: Yes, sir.

MR. MORLEY: Judge, may I—may I discuss one matter with—

THE COURT: Of course.

MR. MORLEY: —with counsel, and we might be able to preclude the necessity of calling a witness.

(Discussion off the record.)

MS. MILLER: Your Honor, counsel has indicated that he wants Shannon Riley. I see the case agent has left the courtroom again. May I get the case agent to have Miss Riley brought up?

THE COURT: Sure.

MS. MILLER: Thank you, sir. If I can have your indulgence for just a minute.

[27] (Pause in proceedings.)

MS. MILLER: I'm sorry, your Honor, the case agent appears to have gone downstairs, and I'm told it's to bring someone up. But since he didn't have any instructions at the time he left, could I have the Court's permission to use the phone to call—

THE COURT: Sure.



MS. MILLER: —and make sure he brings up—

(Pause in proceedings.)

MS. MILLER: Thank you, your Honor.

THE COURT: Could you just, while we're waiting, perhaps you could brief me on what issue—there was a plea here to Count 2, is that right?

MS. MILLER: Yes, sir.

THE COURT: An open plea?

MS. MILLER: Yes, sir.

THE COURT: Count 2 carries with it a mandatory ten-year sentence, does it not?

MS. MILLER: Correct.

MR. MORLEY: A mandatory ten-year?

THE COURT: Yes.

MS. MILLER:— Yes.

MR. MORLEY: No, Judge. Count 2?

THE COURT: Count 2.

MR. MORLEY: If I'm able to—

[28] MS. MILLER: Conspiracy to distribute more than five kilograms of cocaine.

MR. MORLEY: No, we specifically disputed the quantity at the time of the entry of the plea, Judge.

THE COURT: That was my question.

MR. MORLEY: Yes.

THE COURT: I have a recollection that you did reserve that.

MR. MORLEY: Yes, we reserved that, Judge. We specifically reserved that. What she is subject to is the mandatory one year on distributing near a protected area.

THE COURT: Well, if I find that she was involved in five kilograms or more, then she has a mandatory ten.

MR. MORLEY: Right.

THE COURT: So the point here being that while the Probation Office has attributed about 19 kilograms to Amanda Mitchell, which triggers a 121-month sentence, five kilograms triggers 120-month sentence. So you don't

have—you have lots of downward leeway, and you only lose a month.

MS. MILLER: Yes, sir.

THE COURT: From a prosecution standpoint.

MS. MILLER: Right. That is correct, your Honor.

(Pause in proceedings.)

THE COURT: You may swear Miss Riley.

SHANNON K. RILEY, Government's Witness, Sworn.

[29] AUDIO OPERATOR: Please spell and state your name for the record.

THE WITNESS: My name is Shannon Katherine Riley, S-H-A-N-N-O-N, K-A-T-H-E-R-I-N-E, R-I-L-E-Y.

#### DIRECT EXAMINATION

BY MS. MILLER:

Q Good afternoon. Miss Riley—Miss Riley, do you adopt your testimony at the trial of United States versus Harry Riddick as your testimony for purposes of this proceeding?

A Yes, I do.

MS. MILLER: I have no other questions, your Honor.

THE COURT: Cross-examine.

MR. MORLEY: Thank you, Judge.

#### CROSS-EXAMINATION

BY MR. MORLEY:

Q Miss Riley, my name is Steve Morley. I represent Amanda Mitchell. I just have a couple of questions for you.

You entered into an agreement with the Government to cooperate with them?

A That's right.

Q Okay. And in return for that, you received a certain consideration towards a sentencing, is that correct?

A I hope that I will.

Q You hope so. And you entered into this agreement—when you entered into this agreement, you sat down with the [30] Government and you told them what you knew about the drug dealing in this organization, is that correct?

A Right.

Q And at least at that time, and that time would be on—I have two reports, one, June 10th, 1994, and September 29th, 1994. Do you recall meeting with the Government on those days?

A Yes, I do.

Q And at that time—now, have you maintained your cooperative stance with the Government throughout this, or have you wavered some?

A In June, I didn't agree to cooperate at that point. But from September—

Q From September, '94, on—

A Right.

Q —you had agreed to cooperate?

A Yes.

Q Okay. And in September 29th, 1994, with your agreement to cooperate, you wanted to let the Government know in full force everything you knew about the drug dealing on that scene, is that correct?

A Yes.

Q And that's because you wanted to show everything you could to be—to be as cooperative as possible in order to get the benefit of a downward departure on your sentence, [31] correct?

A Right.

Q Okay. Now, I have the—your proffer from September 29th, 1994, where you identify lots of people. You don't mention Amanda Mitchell at all. Did you recall that?

A No, I don't. I mean, I don't remember who I—

Q Okay.

A —who I mentioned or not.

Q Well, you gave a list of people who dealt at Phill's Bar, and Amanda Mitchell was not one of them.

A Okay.

Q Okay. You gave a list of people who you said were working for Harry Riddick. You did not list Amanda Mitchell.

MS. MILLER: Objection. Is this a statement or a question, your Honor?

BY MR. MORLEY:

Q Is that correct?

A If you show me my statement, if you say that's what I said, okay.

MR. MORLEY: May I approach the witness, Judge?

THE COURT: You may approach.

MR. MORLEY: Thank you.

BY MR. MORLEY:

Q You can look at it off there. I just turned it to the appropriate page. I think it's 20—

[32] Okay. If you said I didn't mention her name, then I didn't, so—

Q Okay. If you want to take your time to go through it, you can.

A No.

Q Okay. At trial, you testified that you saw Amanda Mitchell acting in a fashion like she was selling drugs at Phill's Bar, is that correct? I mean, I probably—

A I don't believe those were my exact words.

Q Okay. Your words are of the record, and I don't have them fished out at this point. But basically, you saw her go upstairs with people and come downstairs—

A Right.



Q —and making eye glances. And what did you assume that to mean?

A People would come in the bar. They would make eye contact with somebody and then meet them in the back room and come out a few seconds later.

Q Okay.

A And I noticed her doing that a few times also.

Q Could she be buying?

A She could have been doing anything.

Q So you don't know that she was selling drugs on those occasions, do you?

A No.

[33] MR. MORLEY: Okay. I have no further questions.

THE COURT: You may inquire.

MS. MILLER: I have no other questions.

THE COURT: You may step down, Miss Riley, and be excused.

(Witness excused.)

THE COURT: Is there anyone else? Do you wish to examine Mr. Belfield?

MS. MILLER: No, sir. No, sir.

MR. MORLEY: Yes, yes. I'd like to examine Mr. Belfield briefly.

MS. MILLER: Your Honor, I believe he's right here.

THE COURT: Okay.

MS. MILLER: And the marshal is just bringing him out.

(Pause in proceedings.)

THE COURT: You may swear Mr. Belfield.

PAUL L. BELFIELD, Government's Witness, Sworn.

AUDIO OPERATOR: Please spell and state your name for the record.

THE WITNESS: Paul Lawrence Belfield, P-A-U-L, L-A-W-R-E-N-C-E, B-E-L-F-I-E-L-D.

## DIRECT EXAMINATION

BY MS. MILLER:

Q Good afternoon, sir.

[34] A Good afternoon.

Q Sir, do you adopt your testimony at the trial of United States versus Harry Riddick as your testimony for purposes of this proceeding which is the sentencing of Amanda Mitchell?

A Yes, I do.

MS. MILLER: I have no other questions, your Honor.

THE COURT: Mr. Morley.

## CROSS-EXAMINATION

BY MR. MORLEY:

Q Good afternoon, Mr. Belfield. My name is Steve Morley. I represent Amanda Mitchell. I just have a few questions for you.

A Okay.

Q You were delivering drugs for Harry Riddick starting when, sir?

A I didn't deliver drugs for Harry Riddick. I sold drugs at Phill's Bar and Grill for Harry Riddick.

Q You sold drugs for him?

A Yeah.

Q Okay. And when did you start doing that, sir?

A In May of '92.

Q May of '92. Between the end of '91 and May of '92, what was your relationship with Harry Riddick?

A I've been knowing Harry all—approximately all my life, and—

[35] Q Did you see him delivering—having a drug organization in that period of time?

A Yes, I did—

Q Okay.

A —at Phill's Bar and Grill.

Q At Phill's Bar and Grill?

A Yeah.

Q Okay. And when did you first notice that—that drug business going on out of Phill's Bar and Grill?

A '91 when I got out of prison.

Q When did you get out of prison, sir?

A I got out of prison in '90, but I stayed in the house till early '91.

Q Okay.

THE COURT: You were in prison in Carlisle, is that right?

THE WITNESS: Yes, Cumberland County.

BY MR. MORLEY:

Q Okay. And that was a drug case, right?

A Right.

Q Okay. So you say late '91 is when you first started noticing the drug business going on at Harrys?

A Early '91, early, yeah.

Q Early '91, okay. And you testified at trial that in a time period, late '91, early '92, is when you first saw [36] Amanda Mitchell?

A True.

Q Okay. What I'm trying to pin down, sir, is when in '91 you think you saw her and how you would recall that date?

A I seen her coming in Phill's Bar and Grill when I was just hanging in there, going in there buying small packages of cocaine. And I'd be in there late at night, and I'd see her come in there, giving Harry the pagers and the walkie-talkies that she was using at that time.

Q Okay. You'd see her come back with that—and you say that's late '91?

A Yeah.

Q Late '91, you mean December, '91?

A Somewhere, December, the quarter, last quarter of '91.

Q Okay. How would you know—how do you know it was that time, sir? Did you keep a calendar?

A No, I didn't keep a calendar, no.

Q Okay. Could it have only been as early as January, '92, that you saw her doing that?

A Could have been.

Q Okay.

A Could have been.

Q So basically you're saying late '91, early '92. You're not real sure of the time frame. It may have only started in early '92?

[37] A This could be true, yes.

Q Okay.

MR. MORLEY: I have no further questions. Thank you, Judge.

THE COURT: Do you have any questions?

MS. MILLER: I have no questions, your Honor.

THE COURT: Mr. Belfield, you may step down and be remanded to the marshals.

(Witness excused.)

THE COURT: Mr. Morley, do you have any other witnesses you want to call?

MR. MORLEY: No, Judge.

THE COURT: Are you—your client should—especially in a factual context like this, your client—she may testify if she wishes, but she may remain silent. In either event, whether she wishes to testify or not, she may address me prior to my imposing sentence on her, after you've made a closing argument to me.

MR. MORLEY: Thank you, Judge.

THE COURT: You may confer.

(Pause in proceedings.)

MR. MORLEY: Judge, I have no evidence to present at this time, or—so this is my time to present evidence, I have no time to present—no evidence to present. I have argument to make on the issue of quantity and on—as



well [38] as on the more general issues—sentencing issues in this case.

THE COURT: Well, let's start with the Government. Do you have any argument you want to make?

MS. MILLER: Yes, sir.

Sir, it is perhaps not so much argument because the Government will not repeat the matters that are in its sentencing memorandum unless the Court has questions about any one of the three or so issues that were addressed, whether it be drug—

THE COURT: You might not make 15 kilos—

MS. MILLER: Yes, sir.

THE COURT: —depending on how you slice some of the factual issues. For example, Mr. Thompson I think testified that she was doing it in '94 for two to three months, and I believe the probation officer's calculations were three months.

MS. MILLER: Right.

THE COURT: So even supposing round that out to ten weeks, and—and the other evidence was that there was two ounces three times a week—it was one and a half to two ounces, two to three times a week. The probation officer used two at three times, makes six ounces a week.

Supposing he'd used four ounces—two ounces two times a week or four ounces a week for the—and suppose you [39] make it 50 weeks instead of 52 weeks, (inaudible) weeks instead of 38.7 weeks, you're still at—I have 13.—plus kilos.

So I don't see that I have much leeway in this instance.

MS. MILLER: Yes, sir.

THE COURT: I need to talk to Mr. Morley about that.

MS. MILLER: Yes, sir.

THE COURT: I don't think there's any need for you to show over 15 kilos, although the probation officer has in his report—

MS. MILLER: Yes, sir.

THE COURT: —15 kilos to Amanda Mitchell. I think it's probably something under 15, and that would make a difference if we were under Guideline Sentencing. But under the mandatory minimum, it only makes a one-month difference.

MS. MILLER: That is correct, sir. So, yes, you're not going to hear me give you a detailed analysis on that point.

The Government's position is that while the presentence report calculations were correct, if the Court gives Miss Mitchell—shaves off down to the—even below the most conservative estimate that can be found on these facts, the Court will still be at somewhere between at least five kilograms but less than 15 kilograms, which would be a [40] level 32. And it is the Government's position—

THE COURT: That would—and that's 96 months by my calculations?

MS. MILLER: Correct, correct.

THE COURT: But the 120-month minimum mandatory would take over?

MS. MILLER: That is correct, your Honor.

THE COURT: Is that right, Mr. Miller?

PROBATION OFFICER MILLER: Yes, your Honor. But the safety valve may be applicable in this particular case, your Honor, in regards to Count 2 in the 120-year—the 120-month statutory minimum.

THE COURT: Okay.

MS. MILLER: Your Honor, under—if I may briefly address that provision, your Honor. When the Probation Office stated in the presentence report that Section 5(c)1.2 might apply to this case, the Probation Office had no information available—probation officer had no information available to him at that point as to what exactly Miss Mitchell—what information she was or was not providing about the offense of conviction.

THE COURT: Am I—was this an open plea or were there overtures of cooperation?

MS. MILLER: No, sir. This was simply an open plea.

THE COURT: Cooperation was never an issue in this [41] case?

MS. MILLER: That is correct, your Honor.

THE COURT: Okay. But to get the safety valve, she must make a—must come forward and tell you her involvement in the situation?

MS. MILLER: Yes, sir.

THE COURT: Was that done?

MS. MILLER: Mr. Morley wrote the Government a letter asking—stating that Miss Mitchell was willing to sit down and talk to the agents. However, at the point that that letter was received, Mr.—Miss Mitchell had already filed objections to the presentence report, stating that her position was, and is, that the only delivery she ever made to Harry Riddick were three deliveries to Alvita Mack.

THE COURT: You mean made for Harry Riddick?

MS. MILLER: Right.

THE COURT: You said to.

MS. MILLER: I'm sorry. Yes, for Harry Riddick.

MR. MORLEY: That misstates our position, Judge.

MS. MILLER: Sir, it's in writing. It's right in his objections that her involvement with Harry Riddick is limited to three deliveries to Alvita Mack. It is stated very clearly in his objections.

Realizing that that was her position that she was going to come in and say, "I sold three times to Alvita Mack. [42] That's all I know," the Government did not see any point to having her come all the way in to sit down and tell us that.

THE COURT: Well, and again, there was really no evidence to counteract your—she didn't take—we don't hold this against her for not testifying in her behalf, of course.

MS. MILLER: Correct.

THE COURT: But there is no evidence from her side of the table since she was only—there's no sworn testimony subject to cross-examination that she was only involved in three—

MS. MILLER: Correct.

THE COURT: —incidents.

MS. MILLER: That is correct.

The Government's position, your Honor, is that Miss Mitchell has made it clear that her offer to sit down and, "Tell everything she knows," is by her own position, limited to what she claims are her deliveries to Alvita Mack.

THE COURT: Is it too late for her to do that in your view—to testify now?

MS. MILLER: Sir, she is here to be sentenced before this Court, and the Government's position is that yes, it is too late. She is here to be sentenced, and, yes, it is too late.

This position was not designed for defendants who [43] push it right up to the threshold and say, well, well, now—

THE COURT: But she pleaded guilty to—

MS. MILLER: Yes, sir.

THE COURT: —conspiracy.

MS. MILLER: Yes, for which she gets the three-point reduction—

THE COURT: That's right.

MS. MILLER: —which is what the Guidelines anticipate. But at this point, your Honor, yes, this is—

THE COURT: Okay. I don't think you can take the position that she forced the Government to trial—that she—she tendered, proffered her plea at the last minute. She didn't do that.

MS. MILLER: No, sir.

THE COURT: What she's done is, she hasn't come forward until the last minute, even to now, she hasn't come forward and told you what her involvement is (inaudible).



MS. MILLER: That's correct, sir.

And the Government submits that 5(c)1.2 was not designed for this type of defendant.

THE COURT: Let's read into the record the exact provision of the Guideline. Do you have—I have it here if you don't.

MS. MILLER: Yes, sir. Do you wish the Government—

[44] THE COURT: Yes.

MS. MILLER: —do you wish me to do that?

THE COURT: Would you read it in—

MS. MILLER: Certainly.

THE COURT: —so we know what we're talking about?

MS. MILLER: Okay. With the Court's indulgence.

5(c)1.2 reads that, "In the case," in pertinent part reads that, "In the case of an offense under 21 USC Section 846," which would be the operative section for Miss Mitchell, "the Court shall impose a sentence in accordance with the applicable Guidelines without regard to any statutory minimum sentence if the Court finds that the defendant meets the criteria in 18 United States Code Section 3553, Subsection F, Sub-subsections 1 through 5 set forth verbatim below."

And the subsection that is at issue in this case because the Government agrees that the first four do apply is Subsection 5, "Not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan.

"But the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the Court that the defendant has complied [45] with this requirement."

And the Government submits that the Government is already aware of very substantial information that the defendant is not willing to provide at this point.

Thank you, sir.

THE COURT: Mr. Morley?

MR. MORLEY: Yes, sir.

Your Honor, I would like to just clarify a couple of things that I believe were not stated correctly.

First of all, regarding Miss Mitchell's desire to meet with the Government, it was the—it was not that it was too late in the game to do so. In fact, we scheduled an appointment with the case agent to do that. Miss Mitchell asked that I—Miss Mitchell has concerns about her physical safety, and, therefore, asked that I cancel that and so we did not pursue that. It was not done because we pushed the Government to the limit—

THE COURT: Right. Well—

MR. MORLEY: —pushed every button to the limit. Unfortunately, she—

THE COURT: Unfortunately, it wasn't done.

MR. MORLEY: It was not done. She has made a decision for that reason.

THE COURT: I think the good argument can be made to push the quantities under the 15 Kilogram level. [46] MR. MORLEY: So that's number one. Number two—

THE COURT: If you could do that, you bring it down to 96 months, 97 months, and then you eliminate the 120-month mandatory minimum, if you qualify.

MR. MORLEY: I understand, Judge.

Additionally as regards our position in writing regarding quantities on the PSI, it was our position that the three deals that are—the three deliveries that were made to Alvita Mack that were enumerated in the—in the indictment, where clearly—she is clearly responsible for those, and that comes to a total of about 58 grams.

She also on a regular basis delivered gram quantities, less than gram quantities, for—to share personally with

Alvita Mack, and the two of them would do drugs together. And that, of course, would constitute delivery, but it is part of our—what we stated to the—in the PSI objections.

THE COURT: Okay. There's very substantial evidence that she was doing this.

MR. MORLEY: I understand, Judge.

THE COURT: (Inaudible) on a routine basis.

MR. MORLEY: Judge, I would ask you—

THE COURT: And I think you can argue about the quantities—

MR. MORLEY: Judge—

[47] THE COURT: —you can argue about how many times a week she did it, but it's pretty clear she was doing it on a weekly basis.

MR. MORLEY: Judge, I would ask you to sentence her in accord with the three transactions for which we really know that she was involved, a quantity of about 28 grams, about 58 grams. The reason I ask you to do that is not that she was not at all involved, and, therefore, you should absolve her from all other involvement.

Rather, that to determine her involvement, her usage, her delivery during the time period of '92 to '94 is at this juncture purely conjectural. We are really into guesswork.

And while the Third Circuit says your Honor can extrapolate, I do not think that they mean that you can—I think the Third Circuit allows you to extrapolate drug quantities from a foundation. And I think this case presents a foundation that is far from solid.

We have the testimony of Richard Thompson who, for the first time, never at trial, never in his proffers, brings the matter of Amanda Mack's—Amanda Mitchell's involvement into—through '93 and into '94. That has never been cited prior to today's hearing.

THE COURT: Well, she wasn't on trial.

MR. MORLEY: She wasn't on trial, but his proffers [48] make no mention of that either. And I suggest to the Court that—

THE COURT: Well, we know—

MR. MORLEY: Mr. Thompson's testimony should be suspect.

THE COURT: —that you can never have absolute conformity between the proffers and the proof at trial, and that defense counsel use that in every case—

MR. MORLEY: I agree, Judge, but—

THE COURT: —to undermine the credibility of the witnesses against their—

MR. MORLEY: Precisely, and I'd ask you to make a credibility finding in this case that Mr. Thompson's credibility as to Miss Mitchell's involvement is just not substantial enough to warrant sentencing in accordance with his statements. I think his credibility is sufficiently undermined, his own self-interest—and his lack of prior statements, and he did testify at trial.

If he had not mentioned Amanda Mitchell at all during trial, then I think the argument could be made, "Well, Amanda Mitchell wasn't on trial, therefore, they didn't need to elicit any testimony about her." But questions were asked specifically about other people to elicit Amanda Mitchell, who was not on trial. Therefore, you have two instances in prior statements where he did not mention her involvement, [49] never made any mention of her involvement as being a supervisor in '94.

THE COURT: There's no—there's no enhancement for supervision.

MR. MORLEY: I understand that, but it's still his credibility as to that.

THE COURT: I don't—I find as a fact that she was not a supervisor in the Riddick organization, and Ms. Miller did not suggest that she was. She—I think at one point, she may have had some minor supervisory role, but it's not enough to trigger any change—



MR. MORLEY: Well, that's, of course, if you attribute that testimony the first time ever from Mr. Thompson.

Again, we have Mr. Belfield who says he saw Amanda Mitchell doing this with radios and being around Phill's Bar late '91 into '92. Well, today, it could have been only as early as '92. He's not sure of the dates. So we're into '92, which is in conformance with her activities through that year. In April, August and November, she makes three discreet deliveries.

What is significant is, on the one hand, we have the testimony of Richard Thompson, Paul Belfield and—and Alvita Mack whose testimony at trial. But it's really Thompson and Belfield who pin her as being something of a [50] regular courier. And other than the testimony today of Mr. Thompson, it all ends in '92.

What is significant of that, Judge, is all this case. I have all these surveillance reports, Judge. They don't mention—and transcripts—they don't mention Amanda Mitchell in '93, in '94. They're not there. She is not mentioned.

THE COURT: What about the wiretaps?

MR. MORLEY: The wiretaps, other kinds of surveillance.

THE COURT: I don't think she was supervising. I don't think that she had a role to play other than to deliver to—to the purchaser.

MR. MORLEY: There were—there were tape recorded conversations of three times with Alvita Mack, and there was surveillance ongoing of this organization. I have all these DEA-6s, piles of them, of various surveillance. They don't mention watching and seeing Amanda Mitchell.

There is one tape recorded conversation with Alvita Mack in April of '93—with Alvita Mack, Amanda Mitchell and Alvita Mack, in April of '93, which is cited in the Government's memo to you. A reading of that reflects that Amanda—Alvita Mack is the one trying to

elicit drug information from Amanda Mitchell. And Alvita Mack is the one that is saying things about needing weight, and Amanda [51] Mitchell is saying, "No, they don't have that. They don't have that kind of weight."

And the only thing that's at all incriminatory that Amanda Mitchell says—she's saying, says, "Yeah, but what I'm saying is a lot of times they already got everything bagged up real small so they ain't got that together."

It's a reference to her knowledge of what goes on, and we concede that she knew what was goin on. She was making deliveries. But it's not like, "Oh, I can help you get something."

"Oh, you should call Lori," or "You should call Harry directly." There's nothing in here to acknowledge or in any way infer from this conversation that she has present—that would be April of '93—involvement.

The only corroborative evidence of Amanda Mitchell—

THE COURT: Oh, I'm sorry, excuse me, I made a mistake.

MR. MORLEY: The only corroborative evidence of Amanda Mitchell's involvement other than the words of—of Richard Thompson, who's, I suggest to the Court, is not worthy of this level of belief, is the tape recorded conversation she had and the deliveries she made to Alvita Mack. And this tape recording of her in April of '93, a year, you know, well, six months after the last delivery to [52] Alvita Mack, where she's not even sounding like she's involved—

THE COURT: Let me take a look—

MR. MORLEY: —knowledgeable, yes, but not involved.

MS. MILLER: May I see what counsel is showing the Court just so I know what's—

MR. MORLEY: This is the—I'm sorry. It's the April 11th, '93, transcript, the one you cited in your memo.

MS. MILLER: Well, actually, well, thank you. I'm going to ask the case agent to get the transcript that was actually used at trial, your Honor, because what counsel is showing you is a very rough draft. And the transcript of the tape that was actually played at trial was a lot easier to follow.

MR. MORLEY: It's the only copy I have, Judge.

(Pause in proceedings.)

THE COURT: And the confidential informant was?

MR. MORLEY: Alvita Mack.

MS. MILLER: Alvita Mack.

THE COURT: It was Alvita Mack, right? Yes, I remember this. And it was Lori who was the confidential—was the case—was the undercover agent, is that right? Do I have it right? She's referring to a Lori in this tape. This is not—

[53] MS. MILLER: She's referring to Lori Hottenstein.

THE COURT: Oh, you're right, you're right. You're right.

(Pause in proceedings.)

THE COURT: And your point here is that she's not involved in this?

MR. MORLEY: My point is that she is knowing, she knows what goes on, but she's not saying anything about how she can help get deliveries, how she knows—how she can, how she's delivering. She makes no reference to her own involvement. She's clearly knowledgeable. We've never denied that she's not knowledgeable.

THE COURT: It follows—as a courier, it appears to me like she's being doing it on an ongoing basis.

MR. MORLEY: Not according to this transcript, Judge. I mean, according to the words of Richard Thompson and Paul Belfield, yes. But I think those words are suspect.

THE COURT: There's nothing in this transcript that talks about her being a courier or delivering drugs—

MR. MORLEY: Correct.

THE COURT: —at the time of this conversation.

MR. MORLEY: Correct.

THE COURT: And there may be a—she may—there may be a reference to a scarcity of the product if I'm reading this correct. It's a little hard to follow.

[54] MR. MORLEY: The way I read that—

THE COURT: But, I mean, that doesn't exonerate your client.

MR. MORLEY: Well, I only bring it up because, Judge, the Government present it in their memo as evidence of her involvement in April of '93. And I suggest to the Court that this tape does not show her to be involved in April of '93. It shows her to be somebody who knows about the situation, but does not show her to be a courier or involved in it at that time.

I think the Government's conclusions that it seek to draw from this tape far overreach the words in the tape itself. That's the point of that tape.

And other than that, we don't see or hear about Amanda Mitchell in spite of surveillance, in spite of all kinds of other kinds of wiretaps, Alvita Mack going out tape—with wires. We don't hear or see from her other than the three transactions and concededly, she goes and delivers and shares with people because she's a user at that time, and so she's delivering and sharing.

As far as the testimony of Belfield and Thompson, they lend credibility to the fact that she was a courier. The question I have that sets at the core—heart in this is how can we extrapolate the quantity of drugs when we are not sure about the time frame she did it in, when it's purely [55] speculative, when Mr. Thompson is the only person who puts her involved after November of '92.

Mr. Thompson's own testimony is that he really wasn't seeing what was going on for chunks of time. It is simply not the foundation upon which your Honor can faithfully extrapolate.



I suggest to the Court that in order to be safe in this case, we should stick with what we know to be true. We know that she delivered 58 grams. We know that means she will serve at least a year in jail.

And I think what we have is a 44-year-old woman, never been arrested before in her life. She has been hard working. Ever since her arrest in this case, she has been basically at the same job.

She has come to court today with a number of aunts and friends and her daughter and her sister and her brother—a brother and her couple of aunts. They are here to show the kind of support and family she comes from, that she got into this at a time when she was using drugs on her own. Primarily, she got into doing some selling in order to help feed her own addiction at the time.

She got out of using drugs on her own. She is away from that, and she is very glad to be away from that. She understands she has to go to jail. She understands that she did something wrong and she needs to be punished.

[56] The question for the Court is how much punishment is appropriate in this case? And given the fact that we have to take somebody like Richard Thompson's word and push this to eight or ten years versus saying perhaps Mr. Thompson is right, but the Government hasn't proved by a preponderance of the evidence that he is correct.

Given the person that I have at the bar of the Court, perhaps the best solution is to sentence in accordance with what I know to be true. What I know to be true is two ounces, and perhaps that is under—underselling it, but in this case, that may be all that is necessary to deter her future conduct, adequately punish and—and resolve the Government's needs in this case.

She is willing and has always been willing to plead guilty in this case. She did so without putting the Government to the test. What she seeks in this case is to be

punished for that which we know to be true, not speculation and extrapolation from shaky foundations.

And that's basically the position we're taking, Judge, not that she is an innocent who delivered only those three times but rather, that the proof of her other deliveries is not sufficient to meet the Government's burden of proof in this matter. And, therefore, we should sentence in accordance with the lower proof.

THE COURT: Isn't the rule that once she pleads [57] guilty, then the—her duty to remain silent no longer pertains?

MR. MORLEY: Judge, my understanding—

THE COURT: I mean, what troubles me here is that she hasn't come forward, been sworn, and told us—or ever told the Government what her involvement is in this instance. And I think the—from where I sit—it looks like she was a courier on a routine basis, and if we modify the figures, extrapolate them more along the lines of taking minimum or conservative amounts, well over five kilograms, I don't really see that I have much leeway.

MR. MORLEY: Judge, I think if you reject Richard Thompson's testimony or reject his testimony as regards '93 and '94 as just not credible and leave it at '90—

THE COURT: Yes, but—

MR. MORLEY: —at about nine months in '92—

THE COURT: —there's only one problem with that. I don't think it is not credible. I mean, I think—I think that she was a courier for this period of time. I think if you use two days a week for a year and a half at two ounces a shot, you're over five grams, five kilograms.

MR. MORLEY: I understand that, Judge. I'm asking you—

THE COURT: Not even counting '94.

MR. MORLEY: I ask you to take a look at the [58] testimony and look at what Mr. Thompson has at stake and look at what his interests in this case are and to determine that—

THE COURT: He testified—he and Belfield testified—they're career criminals.

MR. MORLEY: And he also testified—and Belfield testified he was using cocaine at the time. I mean, so how good is his memory?

THE COURT: But the problem is their testimony fits the wiretaps and the rest of the evidence that we heard at great length—

MR. MORLEY: I understand that.

THE COURT: —rather completely.

MR. MORLEY: Which wiretaps don't relate at all to Miss Mitchell in terms of even mentioning her.

THE COURT: I don't think she was—Miss Mitchell was involved with Miss Riley except Miss Riley saw her at Phill's Bar under circumstances that would suggest she was selling cocaine.

MR. MORLEY: Although Miss Riley retracted that today, your Honor. She—

THE COURT: Well, no, she said—

MR. MORLEY: —she said I didn't know what she was doing.

THE COURT: —I can't tell what she was doing in [59] there, but her actions are consistent with being a seller of cocaine.

MR. MORLEY: Or a purchaser of cocaine.

THE COURT: Or a purchaser.

MR. MORLEY: Or a purchaser. And—

THE COURT: Well, a purchaser wouldn't be within the—I don't think would be within the ambit of the conspiracy.

MR. MORLEY: Well, there are two things. Purchasing is not within the ambit of the conspiracy, number one. Number two, even if she is a seller in Phill's Bar, there's nothing to show that she was selling cocaine for this conspiracy. In other words, it could have been her—getting some cocaine for her own use, selling a little bit to be able to make another purchase.

THE COURT: She (inaudible) purchase, she was a conspirator in the Riddick conspiracy.

MR. MORLEY: Right. Judge, we have no problem with that because the Alvita Mack deliveries are within the Riddick conspiracy.

THE COURT: Okay.

MR. MORLEY: So we're not—we're not disputing that. I just don't think Shannon Riley's testimony goes to anything in this case as far—regarding Amanda Mitchell. She has not come forward, Judge, to talk to the Government because she is scared. And it's always been my position that [60] the defendant is the best judge of the realities of that fear.

THE COURT: Then if she's more afraid of those people than she is of the Sentencing Guidelines (inaudible.)

MR. MORLEY: And as far as her obligation to testify after she pleads guilty, I think that—I think she retains her Fifth Amendment privilege through sentencing. But—

THE COURT: Well, if I'm wrong—and let the record—you may want to take that up because I believe that under—once she pleads guilty, it's my understanding—or am I wrong in that, Attorney Miller?

MS. MILLER: I'm sorry, sir?

THE COURT: I believe that once a criminal defendant in a felony charge pleads guilty, then that defendant does not—no longer has a Fifth Amendment right to remain silent.

MS. MILLER: Yes, sir, with—with respect to the—

THE COURT: It's the sort of things we mention—say that you're giving up your—

MR. MORLEY: Right.

THE COURT: —right to be silent. You may be questioned about this proceeding by the Judge?

MS. MILLER: Yes, sir. But it is the Government's position that that is true with respect to the offenses to [61] which she pled guilty.

THE COURT: And let's get that tested. I think that if I—I think that in—in rejecting your argument that I should reject the Belfield/Riley/Thompson testimony. One of the things that I am basing on that is her not testifying to the contrary. So there you have it. If I'm wrong, surely we'll have her resentenced.



MR. MORLEY: Okay. One moment, Judge.

THE COURT: Yes. You need to find out whether she wants to address me without being subject to cross-examination before I impose sentence.

MR. MORLEY: That—

THE COURT: Before you do that, let Ms. Miller reply to anything just said.

MS. MILLER: Yes, if I may briefly, your Honor. Very briefly, Judge, on the issue of drug quantity.

As the Court knows, the standard here is preponderance of the evidence. As the Court has noted, there is sworn testimony that is very, very substantial before the Court that far exceeds that burden, and counsel has produced absolutely nothing to undermine that testimony. And it has been corroborated.

And basically, the Court would have to find that these witnesses are incredible and throw out all their testimony in order to find that their testimony with respect [62] to Miss Mitchell was unreliable for some reason that counsel has not presented.

Under *United States versus Polino* (ph), the Third Circuit precedent for this circuit, the Court must look at exactly the kind of testimony we received here today. In *Polino*, there was a member of a conspiracy who testified to the frequency and the average amount of cocaine sold by a certain defendant, and the *Polino* Court indicated that is precisely the kind of reliable testimony concerning average amounts and time periods on which a sentencing Court can rely to estimate amounts of drugs that have never actually been seized by a law enforcement agency.

So the Court, to adopt counsel's argument, basically the Court would have to find that you can never sentence a defendant to anything except the drugs that were actually seized from him or that an undercover agent actually purchased, that the Court would always be confined to that.

And the Government submits that even under the most conservative estimate, taking two ounces per day, cutting out almost everything—

THE COURT: Changing it from three times a week to two times a week.

MS. MILLER: Right. Shaving it to two times a week to one and a half ounces per day and ignoring the fact that sometimes there would be more cocaine than that, even so, [63] Judge, we're still coming up with 18.4 kilograms of cocaine. The bottom line is it's way over five kilograms, and counsel has presented nothing to cast any doubt on that.

One point with respect to the issue of the escape clause, 5(c)1.2—

THE COURT: He doesn't seek the escape clause.

MS. MILLER: Judge, there's just—

THE COURT: There's no—there's no claim by the defendant that it applies.

MR. MORLEY: I agree, Judge. We're not claiming it.

THE COURT: She has—they admit that she—it was admitted that she does not wish to do that for fear of her own personal safety.

MS. MILLER: Judge, the Government would just state for the record there is no evidence on this record that her safety has been implicated in any way. And until counsel proffers some evidence to show other than—other than verbal proffer by counsel without any evidence that there was ever any threat to her—

THE COURT: It's not—he's not—she's not claiming the escape clause.

MS. MILLER: Just for the record, Judge, there's been no evidence of fear for safety on this record.

THE COURT: Is there anything else—

MS. MILLER: Thank you, sir.

[64] THE COURT: —you wish to call to my attention?

MS. MILLER: No, sir. Thank you.

THE COURT: Does your client wish to address me or remain silent?

MR. MORLEY: Could she do it from here, Judge?

THE COURT: Of course.

MR. MORLEY: Thank you.

THE DEFENDANT: My name is Amanda Mitchell. I know for a long time I used drugs. I did a lot of things I—to get drugs.

I'm thankful to be alive today, from getting away from drugs. I changed my whole life totally around, and—I just got away from it. I got too involved with doing drugs. And as much drugs as I did, I couldn't have did all the other things. That's all I have to say.

MR. MORLEY: Judge, I have nothing to add. I think the issues are clear.

The COURT: Okay. I'm sad for you, Miss Mitchell. You seem to have made a lot of progress. You've been on pretrial supervision, and there have been no incidents that I know about.

The problem is it's pretty clear you were a courier for two to three years, and that by delivering small quantities, it adds up to more than five kilograms. Once it adds up to five kilograms, your sentence is 120 months, and I [65] can't do much about that. I could—I could beat that by branding Riley, Thompson and Belfield liars, but I don't think they are liars. I think they were substantially accurate.

I held it against you that you didn't come forward today and tell me that you really only did this a couple of times. And if I made a mistake legally in that because in the United States, we have this principle that no defendant may be compelled to be a witness against herself.

And at the guilty plea, you and your counsel reserved the right to have the Government prove by a preponderance of the evidence the amount of cocaine that you were involved with as related to the offenses you pleaded guilty to. I'm taking the position that you should come forward and explain your side of this issue.

Your counsel's taking the position that you have a Fifth Amendment right not to. If he's right in that, and I believe he's—he's protecting the record so that there

may be an appeal here. And I advise you that you have a right to appeal. If he's—if it's determined by a higher Court that he's right in that regard, I would be willing to bring you back for resentencing. And if you—if—and then I might take a closer look at the Belfield/Riley/Thompson testimony.

But without anything from you and with my understanding of this Riddick cocaine organization, I think [66] you were involved in more than five kilograms of cocaine. Therefore, you're sentenced—but I don't think it was 15. My calculations are 13. —I have about 13 kilograms plus. I have 3.3 kilograms in '94, 5.6 kilograms in '93, and 3.9 kilograms in '92.

And that will trigger 120 month sentence, so you're sentenced to the custody of the Attorney General for 120 months. You're directed to report to the institution on August 1st—

MS. MILLER: Your Honor.

THE COURT: Yes?

MS. MILLER: I'm very sorry to interrupt the Court, but under 18 United States Code, Section 3143, it is, in fact, mandatory for the defendant to be remanded at this time.

THE COURT: You're right. The presentence report suggested that she was a good candidate for self-surrender, but I think you're right.

MS. MILLER: Unfortunately, it is mandatory.

THE COURT: I think you're right. So you'll be taken into custody today. But your—I won't—in light of the fact that I think your sentence is harsh under the mandatory minimum, I impose no fine.

I place you on supervised release for a period of six years upon your release with instructions for drug [67] — testing at the option of the Probation Office.

Your special assessment of \$200 is imposed, and this sentence is imposed on Counts 2, 11, 21 and 28 to be served concurrently. You're to report to the Probation Office within 72 hours after your release from incarceration.



Mr. Miller, is there anything in the sentencing that's been omitted?

PROBATION OFFICER MILLER: No, your Honor.

MS. MILLER: Not from the Government, your Honor.

THE COURT: All right. And you may take Miss Mitchell into custody to begin serving her sentence.

(Proceedings concluded at this time.)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

Case Number: 2:94CR00159-14

UNITED STATES OF AMERICA

v.

AMANDA MITCHELL

(For Offenses Committed On or After November 1, 1987)

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

[X] pleaded guilty to count(s) 2, 11, 21, 28.

[ ] pleaded nolo contendere to count(s) \_\_\_\_\_  
which (was) (were) accepted by the court.

[ ] was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

Title/Sect	Nature of Offense	Date Offense Concluded	Count Num- ber(s)
21 USC § 846	Conspiracy to Distribute Cocaine.	03/01/94	2
21 USC § 860(a)	Distribute Cocaine Within 1000 Feet of a School.	04/09/92	11
21 USC § 860(a)	Distribute Cocaine Within 1000 Feet of a School.	08/12/92	21
21 USC § 860(a)	Distribute Cocaine Within 1000 Feet of a School.	11/11/92	28

The defendant is sentenced as provided in pages 1 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).
- ☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.:	07/02/96
247-94-6468	Date of Imposition of Judgment
Defendant's Date of Birth:	
07/29/51	/s/ Edward N. Cahn
Defendant's Mailing Address:	Signature of Judicial Officer
539 N. Fountain Street	
Allentown PA 18102	EDWARD N. CAHN
Defendant's Residence Address:	Chief Judge
539 N. Fountain Street	Name & Title of Judicial Officer
Allentown PA 18102	
	07/02/96
	Date

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months.

120 months on Count(s): 2, 11, 21, 28

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district.
- ☐ at \_\_\_\_\_am/pm on \_\_\_\_\_.
- ☐ As notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
- ☐ before 2:00 p.m. on \_\_\_\_\_.
- ☐ As notified by the United States Marshal.
- ☐ As notified by the probation office.

cc: Def  
Def Atty  
U.S. Atty-Barbara Miller  
Probation-Donald Miller  
U.S. Marshal(2)  
Pretrial

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this  
judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 6 years.

6 years as to Count(s): 2, 11, 21, 28

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall not possess a firearm or destructive device. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the schedule of payments set forth in the financial obligation portion of this Judgment. The defendant shall comply with the following additional conditions:

The defendant shall be tested for drug use at the direction of the probation officer.

### **STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal

history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### FINANCIAL OBLIGATIONS

The defendant shall pay the following total financial penalties in accordance with the schedule of payments set out below:

Count	Assessment	Fine	Restitution
2	\$ 50.00	\$ .00	\$ .00
11	\$ 50.00	\$ .00	\$ .00
21	\$ 50.00	\$ .00	\$ .00
28	\$ 50.00	\$ .00	\$ .00
Totals:	\$200.00	\$ .00	\$ .00

### FINE

The fine includes any costs of incarceration and/or supervision.

[X] The court has determined that the defendant does not have the ability to pay interest in full. It is ordered that:

[X] The interest requirement is waived.

[ ] The interest requirement is modified as follows:

### RESTITUTION

Each restitution payment shall be divided proportionately among the payees named unless specified in the priority payment column below. Restitution shall be paid to the following persons in the following amounts:

Name of Payee	Amount of Restitution	Priority Order of Payment
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### SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) fine costs; (5) interest; (6) penalties.

The total fine and other monetary penalties shall be paid as follows:

☒ in full immediately.

☐ in full not later than \_\_\_\_\_.

☐ in installments which the probation officer shall establish and may periodically modify provided that the entire financial penalty is paid no later than 5 years after release from incarceration, if incarceration is imposed. If probation is imposed, not later than the expiration of probation.

☐ in monthly installments of \$\_\_\_\_\_ over a period of \_\_\_\_\_ months. The probation officer may periodically modify the payment schedule, provided the penalty is paid in full in accordance with the term specified above. The first payment is due 30 days after the date of this judgment. The second and subsequent payments are due monthly thereafter.

All financial penalty payments are to be made to U.S. Clerk of Court Eastern District of Pennsylvania except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the above payment options are subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

Unless otherwise ordered by the court, any financial penalty imposed by this order shall be due and payable during the period of incarceration, with any unpaid balance to be a condition of supervised release. Any financial penalties collected while the defendant is incarcerated shall be reported by the Bureau of Prisons to the Clerk of the Court and the probation officer. The probation officer shall notify the United States District Court, the Clerk of the Court, and the United States Attorney's Office of the payment schedule and any modifications to that schedule.

## STATEMENT OF REASONS

- ☐ The Court adopts the factual findings and guideline application in the presentence report.

## OR

- ☒ The Court adopts the factual findings and guideline application in the presentence report except

The court determines that the amount of drugs attributable to the defendant to be 13.5 kilograms.

*Guideline Range Determined by the Court:*

Total Offense Level: 30

Criminal History Category: I

Imprisonment Range: 97 to 121 months and \_\_\_\_\_ months consecutive.

Supervised Release Range: \_\_\_\_\_ to 6 years

Fine Range: \$1,500.00 to \$10,000.00

- ☒ Fine waived or imposed below the guideline range, because of inability to pay.

Restitution: \$\_\_\_\_\_

- ☐ Full restitution is not ordered for the following reason(s):

- ☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

## OR

- ☒ The sentence is within the guideline range, that range does not exceed 24 months, and the sentence is imposed for the following reasons(s):

The sentence is a mandatory 10 year minimum.

## OR

- ☐ The sentence departs from the guideline range
- ☐ upon motion of the government, as a result of defendant's substantial assistance.
- ☐ for the following reason(s):



Filed September 9, 1997

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 96-1605

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UNITED STATES OF AMERICA

v.

AMANDA MITCHELL,  
aka AMANDA FOSTER

AMANDA MITCHELL,  
*Appellant*

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. No. 94-cr-00159-14)

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Argued July 17, 1997

Before: SLOVITER *Chief Judge*, ROTH and  
MICHEL, \* *Circuit Judges*

(Opinion Filed September 9, 1997)

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\* Hon. Paul R. Michel, United States Court of Appeals for the  
Federal Circuit, sitting by designation.

OPINION OF THE COURT

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SLOVITER, *Chief Judge*.

This appeal by Amanda Mitchell, who pled guilty to engaging in a conspiracy to distribute cocaine, raises an issue of first impression for this court, namely, whether a criminal defendant who pleads guilty to distributing cocaine but reserves the right to contest the amount of cocaine for which she should be held responsible has a Fifth Amendment right not to testify during sentencing.

I.

Mitchell and twenty-two other defendants were indicted for their roles in a cocaine conspiracy conducted between 1989 and March 1994, in Allentown, Pennsylvania. According to the indictment, defendant Harry Riddick led the conspiracy, purchasing large quantities of cocaine from various suppliers and selling the cocaine on a daily basis through couriers and street sellers to whom he provided cars and pagers for this purpose. Phill's Bar and Grill was the headquarters for the distribution ring.

Mitchell was charged in Count 1 with conspiring to distribute five or more kilograms of cocaine in violation of 21 U.S.C. § 846 and in Counts 11, 21 and 28 for distribution of cocaine within 1,000 feet of a school or playground on three specific occasions in violation of 21 U.S.C. § 860(a). Under 21 U.S.C. § 841, the mandatory minimum sentence for a defendant convicted of distributing at least five kilograms but less than fifteen kilograms of cocaine is ten years imprisonment. The Sentencing Guidelines may then be used to increase the sentence above the statutory minimum as high as life imprisonment if it is determined that defendant sold a greater quantity of drugs or had a greater role in the conspiracy. In this case, Mitchell's mandatory minimum sentence fell within

her Guidelines range, which was 97 to 121 months imprisonment.

On October 16, 1995, Mitchell entered an open plea of guilty, i.e., her plea was not premised on a plea agreement, to all four counts but reserved the right to contest the quantity of cocaine which she distributed. During the plea colloquy the district judge sought to ensure that Mitchell understood her rights. The judge began by stating that Mitchell had been charged with distributing more than five kilograms of cocaine, but after Mitchell's attorney reminded the judge that she did not accede to the amount of drugs at issue, the judge agreed that the quantity would be determined at sentencing.

The district judge then told Mitchell of the possible range of punishment she was exposing herself to by pleading guilty. The judge noted that "the range of punishment here is very complex because we don't know how much cocaine the Government's going to be able to show you were involved in," app. at 1305, and then deferred to the Assistant United States Attorney for her explanation of the possible punishment. The government lawyer stated:

Ms. Miller [AUSA]: On Count 2, Miss Mitchell faces a mandatory minimum of ten years up to a maximum of life imprisonment, a maximum fine of \$4 million, a mandatory minimum of five years up to a lifetime supervised release, and a \$50 special assessment.

On each of Counts 11, 21 and 28, Miss Mitchell faces a mandatory minimum of one year imprisonment up to a maximum of 40 years imprisonment, a maximum fine of \$2 million, a mandatory minimum of six years supervised release up to lifetime supervised release, and a \$50 special assessment.

On all counts, Miss Mitchell would face a total of a mandatory minimum of ten years up to a maxi-

mum of lifetime imprisonment, a \$10 million fine, a mandatory minimum of six years up to lifetime supervised release, and a \$200 special assessment. That would be on all counts.

The Court: Okay. Now, the penalties you just set forth, Ms. Miller, assume there's a five-kilogram involvement?

Ms. Miller: That's correct, sir.

The Court: So those are the penalties if the Government can prove that you [Mitchell] were involved in five kilograms of cocaine distribution. Your lawyer says you're not, is that right?

Mr. Morley [Mitchell's Attorney]: That's correct, sir.

The Court: So if you're not, then the penalties would be less.

App. at 1306-07.

Before accepting her plea, the district court stated that: "I find that there is a factual basis for the plea. I find that you understand your pretrial rights, your trial rights. I find that you understand as well as it can be understood the range of punishment to which you're exposing yourself including imprisonment." App. at 1322. The court also explained that Mitchell would be waiving her rights by pleading guilty, including specifically her Fifth Amendment right not to testify. App. at 1314. Mitchell then pled guilty.

Thereafter, in January 1996, the case against nine of Mitchell's co-defendants went to trial. Much of the trial testimony focused on Riddick's management of the cocaine operation. However, several of Mitchell's co-defendants who had pled guilty and agreed to cooperate with the government testified that Mitchell was one of Riddick's regular sellers. Shannon Riley testified that she often saw Mitchell at Phill's Bar going into the bathrooms in order to sell cocaine.



Paul Belfield testified that he regularly sold cocaine for Riddick and that during 1991 and 1992 Mitchell delivered the cocaine to him. When asked how he would get in touch with Mitchell, Belfield stated that "I would beep Harry Riddick, then Amanda [Mitchell] would come by and deliver me the cocaine." App. at 830. He testified that Mitchell used pagers and two-way radios that Riddick had given her for use in her cocaine deliveries.

Richard Thompson's testimony went directly to the issue of the quantity of cocaine involved. He testified that he worked two to three times per week selling at least two ounces of cocaine each day, that in April 1992, Riddick asked him to take Mitchell around and introduce her to Thompson's customers, and that she received a one and a half ounce bag of cocaine to sell two to three times per week. He stated that he saw Mitchell selling cocaine at this rate through December 1993. It is primarily Thompson's testimony that Mitchell seeks to undermine on appeal.

Mitchell's sentencing hearing took place on July 2, 1996. During the hearing Paul Belfield and Shannon Riley adopted their trial testimony and were cross-examined by Mitchell's counsel. The government also called Richard Thompson who adopted his trial testimony but also answered additional questions posed by the government about the specific amounts of cocaine that Mitchell had sold. Thompson testified that between April 1992 and August 1992 Mitchell worked two to three times a week selling one and a half to two ounces of cocaine each day, that between August 1992 and December 1993 she worked three to five times a week, and that from January 1994 through March 1994 Mitchell was in charge of distribution. On cross-examination, Mitchell's attorney elicited Thompson's concession that he did not see Mitchell consistently throughout this period.

The testimony of another trial witness, Alvitta Mack, was also adopted by both parties during the sentencing hearing. Mack had made a series of drug buys under the supervision of the DEA, and tape recorded some of the conversations. On several occasions Mack ordered a half ounce of cocaine from Riddick who sent his couriers, including Mitchell, to deliver the cocaine to Mack's house and collect the money. Mack testified as to three sales, consisting of a total of two ounces of cocaine. Mitchell argued that these three documented sales were the only reliable testimony as to the quantity for which she should be held responsible. However, Mitchell provided no evidence and did not testify to rebut the government's evidence about drug quantity.

At the close of testimony at the sentencing hearing, the district judge stated that he believed Mitchell no longer retained a right not to testify because she had pled guilty to the underlying offense and thereby waived her Fifth Amendment privilege. He explained that he also found credible the testimony that she was a courier during the period of time in question and that, even at the very least, her sales of two ounces two days a week for a year and a half put her over the five kilogram level. Thus, she was subject to the statutory minimum penalty of ten years.

The Court then entered into the following dialogue with the attorneys:

Mr. Morley: And as far as her obligation to testify after she pleads guilty, I think that—I think she retains her Fifth Amendment privilege through sentencing. But—

The Court: Well, if I'm wrong—and let the record—you may want to take that up because I believe that under—once she pleads guilty, it's my understanding—or am I wrong in that, Attorney Miller?

Ms. Miller: I'm sorry, sir?

The Court: I believe that once a criminal defendant in a felony charge pleads guilty, then that defendant does not—no longer has a Fifth Amendment right to remain silent.

Ms. Miller: Yes, sir, with—with respect to the—

The Court: It's the sort of things we mention—we say that you're giving up your—

Mr. Morley: Right.

The Court: —right to be silent. . . .

\* \* \*

And let's get that tested. I think that if I—I think that in—in rejecting your argument that I should reject the Belfield/Riley/Thompson testimony, one of the things that I am basing on that is her not testifying to the contrary. So there you have it. If I'm wrong, surely we'll have her resentenced.

App. at 1290-91.

Later the district judge told Mitchell that:

I held it against you that you didn't come forward today and tell me that you really only did this a couple of times. And if I made a mistake legally in that because in the United States, we have this principle that no defendant may be compelled to be a witness against herself.

. . . I'm taking the position that you should come forward and explain your side of this issue.

Your counsel's taking the position that you have a Fifth Amendment right not to. If he's right in that regard, I would be willing to bring you back for resentencing. And if you—if—and then I might take a closer look at the Belfield/Riley/Thompson testimony.

App. at 1295.

The district court then concluded that Mitchell sold 3.3 kilograms in 1994, 5.6 kilograms in 1993, and 3.9 kilograms in 1992 for a total of almost 13.0 kilograms. The court then sentenced her to the statutory minimum sentence of 120 months imprisonment, six years of supervised release, and a special assessment of \$200.

## II.

Mitchell raises two issues on appeal. First, she argues that the district court erred by refusing to recognize her Fifth Amendment right not to testify during sentencing. Second, she contends that the district court erred in finding that the government proved by the preponderance of the evidence that Mitchell had sold thirteen kilograms of cocaine.

### A.

#### *Fifth Amendment Claim*

The Fifth Amendment to the United States Constitution states that "no person . . . shall be compelled in any criminal case to be a witness against himself." This privilege protects a person's right to refuse to testify at trial, *see United States v. Frierson*, 945 F.2d 650, 656 (3d Cir. 1991), *cert. denied*, 503 U.S. 952 (1992), and to refuse to provide evidence that would lead to prosecution or be used against him or her in a criminal prosecution, *see Hoffman v. United States*, 341 U.S. 479, 486 (1951). The privilege also precludes the government or the court from penalizing a defendant in any way for the use of the privilege, *see Minnesota v. Murphy*, 465 U.S. 420, 434 (1984), and this encompasses a prohibition against comment on the exercise of the privilege at trial, *see Wilson v. United States*, 149 U.S. 60, 62 (1893).

On the other hand, if a defendant's testimony cannot incriminate her, she cannot claim a Fifth Amendment privilege. *See Ullmann v. United States*, 350 U.S. 422, 431 (1956) ("if the criminality has already been taken



away, the amendment ceases to apply" (internal quotations omitted)). Once a defendant has been convicted of an offense, the privilege is lost because "he can no longer be incriminated by his testimony about said crime." *Reina v. United States*, 364 U.S. 507, 513 (1960).

Similarly, as we held in *Frierson*, a defendant who has pled guilty to the offense "waives his privilege as to the acts constituting it." 945 F.2d at 656; *see also United States v. Rodriguez*, 706 F.2d 31, 36 (2d Cir. 1983); *United States v. Moore*, 682 F.2d 853, 856 (9th Cir. 1982). Of course, such a waiver will be effective only when the trial court has fully advised the defendant of the rights which the defendant relinquishes by such a plea.

Mitchell does not claim that she was not fully advised of the consequences of her guilty plea, including her forfeiture of the right to a jury trial and the right to remain silent under the Fifth Amendment. *See app.* at 1313-15. Nor does she contend that her plea was not knowing and intelligent. By voluntarily and knowingly pleading guilty to the offense Mitchell waived her Fifth Amendment privilege and stood before the court in the same position as if she had been convicted by a jury, a point the district judge emphasized. *See app.* at 1313.

In support of the proposition that she retained the right to invoke the Fifth Amendment in connection with her sentencing even though she had pled guilty, Mitchell cites three Third Circuit cases: *United States v. Garcia*, 544 F.2d 681 (3d Cir. 1976); *United States v. Heubel*, 864 F.2d 1104 (3d Cir. 1989); and *United States v. Frierson*, 945 F.2d 650 (3d Cir. 1976). In *Garcia*, we held that the district court could not condition lenity on a sentence following a guilty plea on the defendants' revealing the source of their supply of cocaine and helping the authorities clean up or stamp out the drug problem. We noted that defendants were offered no assurance of immunity, commenting "if either appellant had acceded to the sentencing court's request to reveal his source of supply of

cocaine, there was no guarantee that he would not be subsequently indicted for other acts not encompassed in the plea agreement." *Garcia*, 544 F.2d at 685.

Similarly, in *Heubel*, where we followed *Garcia* and held that a sentencing judge may not use a defendant's "failure to waive [the privilege against self-incrimination] as negative evidence to penalize him or her in deciding upon the appropriate sentence," *Heubel*, 864 F.2d at 1111, the basis for invocation of the privilege by the defendant who was charged with possession of cocaine with intent to distribute was "self-incrimination as to a potential conspiracy charge," *see id.* at 1106.

In *Frierson*, where we engaged in our most complete analysis of the issue of the assertion of the Fifth Amendment privilege in the context of sentencing, we held that "a denied reduction in sentence is a penalty in the context of Fifth Amendment jurisprudence," 945 F.2d at 660, but that *Frierson* had failed to claim the privilege "when asked during the sentencing process about acts beyond the acts of the offense of conviction," *id.* at 661. Therefore, the district court could properly deny him the two-level reduction for acceptance of responsibility because he had denied possessing a gun in his voluntary statements to the probation officer. Significantly, in *Frierson*, we pointed out that the questioning as to the gun "could produce information that would enhance [Frierson's] exposure to criminal liability in a state prosecution for unlawful possession of a dangerous weapon or the like." *Id.* at 657 (citing *Murphy v. Waterfront Comm'n.*, 378 U.S. 52, 78 (1964)).

Thus, rather than support the proposition that a defendant who has pled guilty retains some Fifth Amendment right at sentencing as to the crime of conviction, all three cases on which Mitchell relies are merely examples of the general principle that just as a defendant retains her Fifth Amendment right as to offenses for which she has not yet been convicted, a defendant's plea

of guilty to one offense does not "by its own force . . . waive a privilege with respect to other alleged transgressions." *United States v. Yurasovich*, 580 F.2d 1212, 1218 (3d Cir. 1978); see *United States v. Domenech*, 476 F.2d 1229, 1231 (2d Cir.), cert. denied, 414 U.S. 840 (1973).

We have not previously addressed the question whether a defendant retains a Fifth Amendment right after a guilty plea or conviction with respect to testimony that might negatively affect her sentence. The issue has most frequently arisen when one of several defendants seeks to elicit testimony from one or more of his co-defendants who have pled guilty but have not yet been sentenced. The courts have generally permitted the unwilling witness to assert the Fifth Amendment privilege not to testify. A careful reading of the cases shows that in most instances the courts have explained that the witness would have been at risk of prosecution on other offenses. See *United States v. De La Cruz*, 996 F.2d 1307, 1311 (1st Cir.) (noting that government, in cross-examining witness, could produce testimony that would inculcate him "not merely in the instant transaction but in other [drug] transactions"), cert. denied, 510 U.S. 936 (1993); *United States v. Mathews*, 997 F.2d 848, 851 n.4 (11th Cir.) (stating that "convicted, but not yet sentenced, defendant risks . . . additional prosecutions for related conduct"), cert. denied, 510 U.S. 1029 (1993); *United States v. Bahadar*, 954 F.2d 821, 824 (2d Cir.) (noting that witness remained subject to prosecution on open counts and therefore any testimony which he gave at defendant's trial could have been used as the basis for an upward departure at sentencing or "as evidence to support a prosecution on the two open counts"), cert. denied, 506 U.S. 850 (1992); *Bank One of Cleveland, N.A. v. Abbe*, 916 F.2d 1067, 1075 (6th Cir. 1990) (stating that witnesses' "Fifth Amendment rights did survive their *nolo* plea as to the bank fraud charges because they remained vulnerable to further federal and state prosecution"); *United*

*States v. Lugg*, 892 F.2d 101, 103 (D.C.Cir. 1989) (observing that other charges against witness remained which had not yet been dismissed); *Domenech*, 476 F.2d at 1229 (observing that Count 2 "still remained open against [witness] and his testimony . . . could very well have further incriminated himself on that offense").

Because of the context in which these cases generally arose, i.e., the witness from whom the defendant sought to compel testimony had not been sentenced while the trial proceeded as to the non-pleading defendants, language in the cases commenting on the procedural status seems to have developed into the rule that "Fifth Amendment self-incrimination rights continue in force until sentencing." *Abbe*, 916 F.2d at 1067; see, e.g., *De La Cruz*, 996 F.2d at 1313; *Mathews*, 997 F.2d at 851 n.4; *Lugg*, 892 F.2d at 102-03. As noted, in many of the cases such statements were dicta, as the witness could have been subject to prosecution for other crimes as a result of the compelled testimony and the holdings therefore did not actually extend the Fifth Amendment to sentencing proceedings.

In some cases, however, the courts have segued into the related proposition that the witness could claim the Fifth Amendment privilege if his or her testimony might be used to enhance his sentence. See *United States v. Garcia*, 78 F.3d 1457, 1463 & n.8 (10th Cir.), cert. denied, 116 S. Ct. 1888 (1996). Although by repetition this statement appears to have evolved into an accepted rule, we believe it does not withstand analysis, and our opinion in *Frier-son* suggests the same. In a footnote in that opinion, we stated, "the Fifth Amendment privilege is not implicated when a defendant is asked to talk about the crime to which he has pled guilty and about his or her attitude concerning that crime. Nor is the privilege implicated if the sentence imposed is more harsh because of the defendant's response to that interrogation." 945 F.2d at 656 n.2 (emphasis added).



We see nothing in the Fifth Amendment ("No person . . . shall be compelled in any criminal case to be a witness against himself. . . .") or in the Supreme Court's cases construing it that provides any basis for holding that the self-incrimination that is precluded extends to testimony that would have an impact on the appropriate sentence for the crime of conviction. The sentence is the penalty for the very crime of conviction, and if one could refuse to testify regarding the sentence then that would contravene the established principle that upon conviction, "criminality ceases; and with criminality the privilege." 8 Wigmore, Evidence § 2279 (McNaughton rev. 1961). Similarly, although there may be many components to be considered in computing the sentence in the new era of Sentencing Guidelines and statutory sentencing directives, one cannot logically fragment the sentencing process for this purpose and retain the privilege against self-incrimination as to one or more of the components. Whether the defendant used a gun or had responsibility for more than five kilograms of cocaine is not an issue of independent criminality to which the Fifth Amendment applies in sentencing. Thus, we agree with the suggestion in *Frierson* that the privilege against self-incrimination is not implicated by testimony affecting the level of sentence. See *Frierson*, 945 F.2d at 656 n.2.

Mitchell would have us find that *Frierson* is inapplicable to a situation where a defendant pled guilty but reserved the issue of the amount of drugs for sentencing. She argues that she never admitted to a drug quantity in her plea and specifically reserved the right to contest at sentencing the amount of cocaine attributable to her. We find that argument unpersuasive. Mitchell opened herself up to the full range of possible sentences for distributing cocaine when she was told during her plea colloquy that the penalty for conspiring to distribute cocaine had a maximum of life imprisonment. While her reservation may have put the government to its proof as to the

amount of drugs, her declination to testify on that issue could properly be held against her.

Unlike the witnesses who were still open to prosecution in the series of cases referred to above where the courts sustained the invocation of the Fifth Amendment, Mitchell does not claim that she could be implicated in other crimes by testifying at her sentencing hearing, nor could she be retried by the state for the same offense, see 18 Pa. S.C.A. § 111. As the government notes, Mitchell "was not asked to testify about offenses outside the scope of her guilty plea," appellee's brief at 33, and we thus agree that once she pled guilty to the substantive offense she lost her Fifth Amendment privilege as to that offense.

We thus conclude that although Mitchell faced the possibility of a harsher sentence for this drug offense because of her failure to testify at the sentencing hearing to counter the credibility of Thompson and the other witnesses, in light of the fact that she does not claim that she exposed herself to future federal or state prosecution, the Fifth Amendment privilege no longer was available to her.

## B.

### *Sufficiency of the Evidence*

Mitchell also argues that, whatever our decision on the Fifth Amendment claim, the government did not prove by a preponderance of the evidence that she had sold at least thirteen kilograms of cocaine. We review the district court's findings of fact regarding drug quantity to determine whether they are clearly erroneous. *United States v. Miele*, 989 F.2d 659, 663 (3d Cir. 1993).

Although the sentencing court must carefully scrutinize the government's evidence, "in calculating the amount of drugs involved in a particular operation, a degree of estimation is sometimes necessary." *United States v. Paulino*, 996 F.2d 1541, 1545 (3d Cir.), cert. denied, 510 U.S.

968 (1993). In this case, the district court found credible the four witnesses who testified that Mitchell sold cocaine on a regular basis. Thompson testified that Mitchell sold between one and a half to two ounces of cocaine two to five times a week between April 1992 and March 1994. Riley and Thompson buttressed this testimony by testifying as to Mitchell's role in the conspiracy. Furthermore, the court could infer, from Mitchell's refusal to offer any evidence to the contrary, that these amounts were reliable. We cannot find that the district court's findings were clearly erroneous.

### III.

For the reasons set forth, we will affirm the judgment of conviction and sentence.

MICHEL, *Circuit Judge*, concurring.

While I agree with the result, I am not persuaded to join the categorical rationale that a guilty plea *entirely* waives a defendant's Fifth Amendment privilege—even as to facts that are not elements of the offense charged and as to which a defendant expressly “reserved” in offering a plea. Further, if the court's opinion is ready to indicate merely that the reservation here was ineffective, it is unclear to me why.

Mitchell and her attorney explicitly identified the quantity of drugs stated in the indictment, emphasizing that they “reserved” as to that allegation. It is true that neither Mitchell nor her attorney said anything about Mitchell believing she thereby retained a right to silence at sentencing. Was that omission fatal? And what if they had? Would the trial judge then have been obligated either to reject the plea or to refrain from relying on Mitchell's silence at all?

I accept that ordinarily a guilty plea waives the privilege as to all facts concerning the transactions alleged in an indictment. My only question is whether the same rule applies in the face of such an express reservation as to a non-element, especially where, as here, the defendant's silence was relied on in part to double the mandatory minimum sentence to ten years.

Finally, I believe the appeal could be disposed of under the Harmless Error rule. The trial judge found the government witnesses' testimony credible and sufficient to prove five kilograms, without considering Mitchell's silence. While he later relied as well on her silence in determining her sentence, the evidence amply supported his finding on quantity apart from the reliance. Given the unsettled state of the law among the Circuits on this important Fifth Amendment issue, I would defer a decision on it to a case in which deciding it is unavoidable and



the briefs are more informative. Moreover, although the majority accurately analyzes and artfully distinguishes seemingly contrary decisions by other Circuits, I hesitate to create an apparent split among Circuits.

**AMENDED ORDER  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

No. 96-1605

UNITED STATES OF AMERICA

v.

AMANDA MITCHELL

**SUR PETITION FOR REHEARING**

Present: SLOVITER, *Chief Judge*, BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE, and MICHEL,\* *Circuit Judges*

The petition for rehearing filed by Appellant Amanda Mitchell in the above-entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied. Judge Becker, Judge Mansmann, Judge Scirica and Judge Nygaard would have granted rehearing.

By the Court,

/s/ Dolores K. Sloviter  
Chief Judge

Dated: Oct. 17, 1997

\* Hon. Paul R. Michel, United States Court of Appeals for the Federal Circuit, as to panel rehearing only.

**SUPREME COURT OF THE UNITED STATES**

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**No. 97-7541**

**AMANDA MITCHELL,**

*Petitioner*

**v.**

**UNITED STATES**

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**ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

**June 15, 1998**